Nov 22 1867
Anderson
Mr Williams

8

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~[illegible]~~ 71

THE STEAMER BALTIMORE, THE NEW YORK AND WASHINGTON STEAMSHIP COMPANY CLAIMANTS, APPELLANTS,

vs.

JAMES H. ROWLAND AND BENJAMIN B. WILLIAMS, OWNERS OF THE SCHOONER J. W. WOOLSTON.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA

Record

FILED JANUARY 31, 1868.

Damages only - Counsel
for appellee
Jno. Coyle

SUPREME COURT OF THE UNITED STATES.

No. 254.

THE STEAMER BALTIMORE, THE NEW YORK AND WASHINGTON STEAMSHIP COMPANY CLAIMANTS, APPELLANTS,

vs.

JAMES H. ROWLAND AND BENJAMIN B. WILLIAMS, OWNERS OF THE SCHOONER J. W. WOOLSTON.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

INDEX.

	Original.	Print.
No. 1. Original bill	1	1
2. Notice of seizure	10	4
3. Warrant of arrest, &c.	11	4
4. Endorsement on same	13	5
5. Bond of claimant	13	5
6. Answer to bill	15	6
6½. Agreement about taking testimony	23	8
7. Depositions for libellants	23	9
Henry W. Williams	23	9
James Bee	26	9
William Key	31	11
No. 8. Deposition for libellants	36	13
Purnel Chesser	36	13
Henry Holmes	44	17
William Smith	46	17
Geo. W. Moore	52	20
John Brannigan	56	21
No. 9. Deposition for libellants	58	22
Edward Delaney	58	22
Peter Galloway	63	24
Jacob Galloway	70	27

	Original.	Print.
No. 10. Depositions for defendants	73	29
Oharles F. White	73	29
Capt. H. Lewis	77	30
David J. Price	87	34
Joseph Moor	92	37
Earl Marsh	95	38
Alex. Hunter	100	40
No. 11. Depositions for defendants	103	41
Joseph Dobbins	103	41
Peter Berry	108	43
Joseph Moore	110	44
Chas. F. White	115	46
Earl Marsh	117	47
Capt. H. Lewis	119	47
Lewis H. Hopkins	123	49
A. H. Dodge	130	52
A. H. Pickerell	134	53
No. 12. Depositions for defendants	136	54
Sam'l E. Barnes	136	54
William Garner	144	57
No. 13. Order setting cause for hearing	149	59
No. 14. Order of reference	149	59
No. 15. Auditor's report on damages	151	60
Points for claimants	155	60
libellants	159	63
No. 16. Exceptions to auditor's report	167	65
No. 17. Decree and appeal	167	66
No. 18. Decree in general term	169	66
No. 19. Bond for appeal to Supreme Court United States	170	67

1 In the Supreme Court of the District of Columbia, holding a District Court of the United States for said district, January 22, 1864. In admiralty.

Libel of James H. Rowland and B. B. Williams.—Filed Jan'y 22, 1864.

To the honorable the judges of the Supreme Court of the District of Columbia:

James H. Rowland, of Cecil county, and Benjamin B. Williams, of Harford county, and State of Maryland, owners of the schooner J. W. Woolston, exhibit this their libel against the steamer Baltimore, whereof one Lewis is or lately was master, now lying in the port of Georgetown, in the District of Columbia aforesaid, and within the admiralty and maritime jurisdiction of this honorable court, her engine, machinery, boats, tackle, apparel, and furniture, and against all persons lawfully intervening for their interest therein, in a cause civil and maritime, of tort or damage from collision.

And thereupon the said James H. Rowland and Benjamin B. Williams doth allege and articulately propound as follows, to wit:

First. That said schooner J. W. Woolston is a vessel of one
2 hundred and forty-one tons burden or thereabouts; and at the time when the cause of action hereinafter mentioned and set forth arose, was enrolled and licensed for the coasting trade, and was employed in the business of commerce and navigation between ports and places in different States of the United States.

Second. That on the eleventh day of December, A. D. 1863, the aforesaid schooner, being light, staunch, well manned and provided, sailed from the port of Philadelphia, in the State of Pennsylvania, with a valuable cargo of coal, of two hundred tons, on a voyage to the port of Washington in the District of Columbia.

Third. That on the night of Wednesday, the sixteenth day of said month of December, the said schooner being then on the Potomac river, about fifteen miles from the Chesapeake Bay, or not quite so far and off from a creek on the Maryland shore, called Smith's creek, the night being cloudy but not dark, the wind blowing about east
3 northeast, not blowing very hard, but a good sailing breeze, and the schooner being upon the proper course, steering west northwest, the sails being all full, with a light at the bow under the jib-boom, the land being visible on both sides of the river, and with two men on the forward part of the schooner as look-outs, the said steamer was seen approaching, coming down the river in about a southeasterly direction; the steamer was to the windward of the schooner, and when first seen was about a mile distant or farther. That one of these libellants, to wit, Benjamin B. Williams, was navigating the said schooner as captain, and was then at the helm, steering the said schooner; that as soon as the look-outs descried the said steamer they called out to this libellant to know if he saw her, and he answered that he did. That the schooner was kept upon her proper course, and had

the steamer continued upon the course she was steering when first seen no collision would have happened ; but when the steamer got nearer, and, as is supposed, was not more than three hundred yards dis-
4 tant from the schooner, the said steamer altered her course, came down upon the schooner, and struck her square amidship and sunk her in a few minutes in or about the deepest part of the channel, this libellant and the crew with difficulty saving their lives by taking to a small boat and getting aboard the steamer. That when the said steamer was within fifty yards of the schooner, and when the collision might then have been avoided, and so soon as a collision became probable, this libellant hailed the said steamer at the highest pitch of his voice to stop her, or that the steamer would be into the schooner, but which hailing, if heard, was of no avail, though repeated several times as aforesaid. That the said schooner from the time when a collision first seemed possible could not have been so managed as to avoid the same ; and these libellants well supposed, from the absence of any darkness and the ability of those aboard said steamer to have seen said schooner had they exercised due vigilance, that no
5 such collision would have been even probable, and these libellants allege that the said schooner was wholly without fault and the management of the steamer grossly if not wilfully careless and culpable in the extreme.

Fourth. That the said steamer by which said dammage was done proved to be the steamer Baltimore aforesaid, under the command of one Lewis, and as these libellants have heard and believe, was on a voyage from Georgetown, in said District, to the port of New York ; and those aboard said steamer could and ought to have seen the light suspended from the outer end of the bowsprit of the schooner and which remained there until she was struck by the steamer ; and although the night was cloudy, yet there was no haze on the water, and the said light could have been easily seen, and if the steamer had kept a good look-out must have been seen by those in charge of the steamer at the distance of three-fourths of a mile, or at least
6 at the distance of half a mile, and in ample time to have enabled her to give way for the said schooner as she was bound to do, and thereby to prevent a collision therewith.

Fifth. That if at the time the said steamer was first hailed from the schooner and thenceforth she had had a proper watch on deck, the warning given as hereinbefore mentioned must have been distinctly heard aboard the steamer in season to have enabled her, by putting her helm astarboard, to pass the schooner in safety, or by immediately stopping the engine no collision would have happened. But instead of so doing, her course was so altered as to bring her right down upon the said schooner, and these libellants again allege that from the time when the danger of collision between said vessels was first perceived as aforesaid from the schooner, it was impossible for her to get out of the way of said steamer, nor were there any means to which she could with propriety have resorted for that purpose.

Sixth. That the said schooner and cargo were sunk in such
7 deep water as to make both a total loss, and the cost of rais-

ing either or both at said spot at this season of the year, to wit: the winter time, would cost more than the same would be worth after being raised, supposing that the said raising could be accomplished.

Seventh. That at the time of the aforementioned loss of the said schooner J. W. Woolston and her cargo, the libellants were the true and lawful owners of the said schooner, and were in possession and charge of the cargo as common carriers, the value of which cargo was twenty-two hundred dollars, and the freight on which to be paid to these libellants on arrival of said schooner at Washington was to have been two dollars twenty-five cents per ton upon two hundred tons as aforesaid, viz: the sum of four hundred and fifty dollars. That the said schooner was of the value of fifty-five hundred dollars; and the value of articles in her cabin, which were lost with said schooner, consisting of mattrasses and clothing and other things of which
8 no accurate inventory can now be made, (the property of these libellants,) was two hundred dollars, and that by reason of the careless, negligent, unskilful and improper management of the said steamer Baltimore, and of the collision thereby occasioned of the said steamer with said schooner J. W. Woolston, the libellants have sustained damages and losses as herein specified to the amount of eighty-three hundred and fifty dollars or thereabouts, for which they claim reparation in this suit, together with costs and necessary charges in the prosecution thereof.

Eighth. That all and singular the premises are true. Wherefore these libellants pray that process in due form of law may issue against the said steamer, her engine, machinery, boats, tackle, apparel, and furniture, and that this honorable court will pronounce for the damages aforesaid and decree the same to be paid with costs, and for such other and further relief and redress as to right and justice may
9 appertain and the court is competent to give in the premises.

JAMES H. ROWLAND.
BENJ. B. WILLIAMS.
W. Y. FENDALL,
For Libellants.

DISTRICT OF COLUMBIA, *County of Washington, to wit:*

We, this fifth day of January, A. D. 1864, before the subscriber, a United States commissioner duly appointed, personally came the above-named Benjamin B. Williams, and made oath, in due form of law, that of the matters and things stated in the foregoing libel, such as are stated on his own knowledge are true, and such as are stated on the information of others he believes to be true.

Sworn before me this 5th day of January, A. D. 1864.

EDM. F. BROWN,
United States Commissioner.

[SEAL.]

[Int. revenue stamp, cancelled.]

10 *Notice of seizure and libel and time and place of trial.—Filed January* 23, 1864.

The Supreme Court of the District of Columbia, holding a District Court of the United States for the said District, to all whom it may concern, greeting:

Notice is hereby given, that on the 22d day of January, 1864, the steamer Baltimore, her engine, machinery, boats, tackle, apparel, and furniture, were seized by the marshal for the District of Columbia, in a cause, civil and maritime, for damages and collision, at the suit of James H. Rowland and Benjamin B. Williams, owners of the schooner J. W. Woolston, libellants, and the same are libelled and prosecuted in this court in the name of the said libellants, who pray the court to pronounce for said damages and the costs of the suit; and that said cause will stand for trial at the City Hall, in the city of Washington, on the 3d Monday of February next,
11 when and where all persons are warned to appear to show cause why damages, &c., should not be decreed, and to intervene for their interests.

Jan'y 22, 1864.

R. J. MEIGS, *Clerk.*

In the Supreme Court of the District of Columbia, January 22, 1864.

No. 3.—*Warrant of arrest, &c.—Returned Jan'y* 23, 1864.

JAMES H. ROWLAND and BENJAMIN W. WILLIAMS, owners of the schooner J. W. Woolston, *against* THE STEAMER BALTIMORE, (Lewis, master,) her engine, machinery, boats, tackle, apparel, and furniture, and against all persons lawfully intervening for their interests therein.	No. 101.—Collision.

The President of the United States to the marshal of said district, greeting:

For the causes set forth in the libel in this case, this day filed, you are hereby commanded to arrest the said steamer Baltimore, her engine, machinery, boats, tackles, apparel, and furniture, and
12 take the same into your custody, and safely keep until you receive the further order of said court in the premises. You are also commanded to give public notice, at least 14 days before the day of trial, hereinafter mentioned, of your arrest of said vessel, &c., by publication in the Morning Chronicle, a newspaper published in this District, and warning all persons who may have an interest in said vessel, &c., that the court has appointed the 3d Monday of February, 1864, and the court-room in the City Hall of this city of Washington, as the time and place of the trial of this cause, when

and where they may intervene and make their allegations in that regard.

Witness, David K. Cartter, chief justice of said court, the day and year aforesaid.

R. J. MEIGS, *Clerk.*

13 No. 4.—*Endors't on above.*

Attached and in custody, the steamer Baltimore, her tackle, apparel, and furniture, and given notice as within commanded and bond given. "See inside."

W. H. LAMAN,
U. S. Marshal, D. C.

Jan'y 22d, 1864.

No. 5.—*Bond of claimant.—Filed Jan'y* 23, 1864.

Know all men by these presents, that we, Thomas T. Morgan and John B. Hutchison, are held and firmly bound unto James H. Rowland and Benjamin B. Williams, owners of the schooner J. W. Woolston, in the sum of seventeen thousand dollars, to be paid to the said obligees, for the payment of which, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated this 23d day of January, in the year eighteen hundred and sixty-four.

14 Whereas a libel has been filed in the District Court of the United States of America for the District of Columbia on the 22d day of January, in the year aforesaid, by said obligees against "The steamer Baltimore, her engine, machinery, boats, tackle, apparel, and furniture," for reasons and causes in said libel mentioned; and whereas the said steamer Baltimore, her engine, machinery, apparel, boats, tackle, and furniture, are now in the custody of the marshal of said District, under the process issued in pursuance of the prayer of said libel; and whereas the value of the said loss and damage said to have been sustained and set forth in said libel, is eighty-three hundred and fifty dollars:

Now, therefore, the condition of the said obligation is such that in case the said steamer Baltimore, her engine, machinery, boats, tackle, apparel, and furniture, shall be by the sentence, decree, or judgment of said court, be condemned; if the said Thomas P. Morgan and John B. Hutchison, or either of them, or the heirs, executors, or administrators of the said obligors, or of either of
15 them, shall thereupon pay into the said court the sum of seventeen thousand dollars, or so much thereof as shall or may be necessary to pay and satisfy the damages aforesaid alleged to have been sustained, or such part thereof as shall upon the finding of said

court, be adjudged, then this obligation to be void; otherwise to remain in full force and virtue.

[SEAL.] THOS. P. MORGAN.
[SEAL.] JOHN B. HUTCHISON.

Sealed and delivered in presence of—
JOS. H. BRADLEY, jr.
W. A. MULLOY.

This bond approved.

ANDREW WYLIE.

In Admiralty.

No. 6.—*Answer to libel.*—*Filed March* 1, 1864.

To the honorable the judge of the District Court of the United States for the District of Columbia:

The claim and answer of the New York and Washington
16 Steamship Company, the sole and only owners of the steamer Baltimore, her engine, machinery, boats, tackle, apparel, and furniture, intervening for their interests to the libel of James H. Rowland, of Cecil county, and Benjamin B. Williams, of Harford county, in the State of Maryland, answers and alleges as follows:

First. That these claimants are, and at all times herein alleged were, an incorparated company or body corporate, duly incorporated under and pursuant to the laws of the State of New York, and as such authorized and permitted to own vessels propelled by steam; and that they are and were the sole and only owners of the said steamship Baltimore, her engine, machinery, boats, tackle, apparel, and furniture.

Second. That these claimants are ignorant of the matters alleged in the first and second articles of the said libel, and leave the libellants to make such proof thereof as they may be advised.

17 That these claimants have no personal knowledge of the matters alleged in the third article of the said libel, but that they are informed and believe that the same are, in considerable measure, incorrectly and untruly alleged, and that the truth in respect thereto is as hereinafter alleged; and these claimants deny the allegations of the said libel in respect to the said matters, leaving the libellants to their proof thereof.

Fourth. The said steamer, on the night of December 16th, 1863, being then tight, staunch, and strong, and well and sufficiently manned, apparelled, and equipped, and under the command of a competent master, Henry Lewis, and a suitable crew, was proceeding on her proper course down the Potomac river on an intended voyage to the port of New York. At the time of the collision herein mentioned she had reached a point a little below Smith's creek, some four or five miles from Point Lookout. The wind was as alleged in the libel; the night was cloudy and had become quite dark,
18 and the steamer was heading on an east southeast course for

a harbor at Point Lookout, where her master intended to anchor for the night. Her master and the first mate of the said steamer were on deck, in addition to the watch, and the second mate and a competent man were on the look-out at the forward part of the steamer. The steamer's lights were all set, as required by law. While thus the second mate reported a vessel ahead, which proved, as these claimants believe, to be the said schooner mentioned in the libel. She bore a little on the port bow of the steamer, and was a considerable distance off, though from the darkness of the night these claimants are unable to state exactly how far.

The master of the steamer ordered the man at the wheel to port helm, so as to increase the distance at which the vessels would pass each other; and her helm was so ported, changing the course of the steamer about one point, and so as to give the approaching vessel a wider berth; and the steamer then steadied and continued on her course, until, when the vessels were quite near each other, it
19 was observed that the approaching vessel, which had a free wind and whose proper course up the river was northwest by west half west, instead of keeping that course, was heading diagonally across the river, and with the apparent intention to cross the bow of the steamer; that the steamer's bell was at once rung and her engine stopped, but too late to avoid a collision with the approaching vessel, which she struck about midship, causing her shortly to sink, and that such collision was wholly occasioned by the fault and carelessness of those in charge of the said schooner in endeavoring to cross the steamer's bow instead of keeping on their proper course up the Potomac.

The schooner's crew came aboard the steamer, which continued her course to Point Lookout, where she anchored till the next morning, when they left; that no hail was heard from the said schooner, nor would it have availed to avoid the collision had it been heard, everything having been done on the steamer which was pos-
20 sible to avoid the collision, after it was seen that the conduct of those in charge of the schooner made imminent the danger of it.

Fifth. That these claimants are informed and believe that a good look-out was kept on the said steamer, and that the schooner's light, though but a small light, was seen by such look-out, and that the steamer did give way sufficiently for the said schooner to have safely passed her but for the aforesaid conduct of those in charge of her.

And these claimants further say that the said schooner had a free wind, and was bound, on her part, by not attempting to cross the steamer's bow, to have taken such precautions as would have avoided the said collision.

Sixth. That the claimants have no personal knowledge of the allegations of the fifth article of the libel, but that they are informed and believe the same to be untruly stated, and they deny the same.

Seventh. That the claimants are ignorant, and denying, leave the libellants to their proof of the matters alleged in the [the] sixth and seventh articles of the libel.

21 They, however, expressly deny all careless, negligent, unskilful, or improper management of the said steamer, or of those in charge of her, and say that the said collision was occasioned by the negligence and carelessness of the said schooner, and those in charge of her, as aforesaid, and the claimants deny all all egationsof the libel inconsistent with the averments hereof.

Eighth. That all and singular the premises are true.

Wherefore these claimants pray this honorable court would be pleased to pronounce against the libel aforesaid, and to condemn the libellants in costs, and otherwise law and justice to administer in the premises.

WILLIAM B. HATCH,
Treasurer of the New York and Washington Steamship Co.

NATH'N WILSON,
Proctor of Claim'ts.

22 DISTRICT OF COLUMBIA, *County of Washington, ss:*

On this twenty-ninth day of February, 1864, before the subscriber, a United States commissioner, duly appointed, personally appeared William B. Hatch, and made oath in due form of law, that he was, and is, treasurer of the said claimants, forming the New York and Washington Steamship Company, and duly authorized to answer, by said company, that of the matters and things stated in the foregoing claim and answer, such as are stated on his own knowledge are true, and such as are stated on the information of others he belives to be true.

WILLIAM B. HATCH,
Treas. New York and Washington Steamship Co.

Sworn before me this twenty-ninth day of February, 1864.
[COMMISSIONER'S STAMP.] EDM'D F. BROWN,
United States Commissioner.

[Int. rev., E. F. B., 29 Feb., 1864.]

23 Supreme Court of the District of Columbia.

No. 6½.—*Agreement about notice of taking testimony.—Filed June* 16, 1864.

ROWLAND & WILLIAMS
vs.
THE STEAMER BALTIMORE. } In admiralty. No. .

It is agreed, in the above-entitled cause, that either party, upon three days' notice to the other, may take testimony before E. F. Brown, commissioner of this court in Washington, by depositions.

The said testimony, when taken, to be used as evidence on the trial of the cause, to the same effect as if taken in open court, and to be subject to all just exceptions.

W. Y. FENDALL, *For Libellants.*
JOS. H. BRADLEY, *For Def'ts.*

March 30th, 1864.

No. 7.—*Deposition of Henry W. Williams.—Filed June* 16, 1868.

And the said Henry W. Williams, being by me first carefully examined and cautioned, and duly sworn according to law to testify the whole truth, and being examined on behalf of the libellants, makes oath, deposeth, and saith as follows, viz:

24 My residence is Havre de Grace, Maryland; my age is forty-eight years; my occupation, following the water, and have been so engaged about thirty-five years. I knew the schooner J. W. Woolston, named in these proceedings, and at the time she was lost in the Potomac she was owned by my brother, Benjamin B. Williams, of Harford county, Maryland, and James H. Rowland, of Cecil county, Maryland.

She was a schooner of 141 tons burthen, or thereabouts, and I here present office copies made and given to me by the surveyor of the Havre de Grace district of Maryland of her licence and enrolment. The surveyor had no official seal, and these copies were made and certified in my presence by Mr. Woodhouse, whom I knew to be the proper officer in that behalf.

[These copies are hereunto annexed, marked Exhibit A and Exhibit B. E. F. B., Com'r.]

In the month of December last, and before the schooner was lost, she was worth about six thousand dollars, and from my knowledge

25 of and ownership of vessels, I am able to say that was about her true value. I first saw her after she was sunk on the 25th of December last, (1863.) I have seen her twice since, the last time about two weeks ago. She lies sunk below Smith's creek, in the Potomac river, and above Cornfield Point, and lies heading directly up the river. I ascertain this by the situation of the masts, which were above the water when I first saw them, but have been broken off since. I had seen her one month previously to her sinking. She was then at Havre de Grace, and I was on board of her a number of times.

I am captain of a vessel engaged in the coasting trade, and expect to be absent and out of the jurisdiction of this court at the time of the trial of this cause.

I have no interest in the result of this cause.

HENRY W. WILLIAMS.

Sworn to and subscribed before me this 16th day of April, 1864.

[COMMISSIONER'S STAMP.] EDM'D F. BROWN,
U. S. Commissioner.

[Int. rev. stamp, E. F. B., 16 Apr., 1864.]

26 *Deposition of James Bee, for libellant.—Filed June* 16, 1864.

And the said James Bee, being by me first carefully examined and cautioned, and duly sworn according to law to testify the whole truth, and being examined in behalf of the libellants, makes oath, deposeth and saith as follows, to wit:

I am forty-nine years of age, and reside at Have de Grace, Mary-

land. I have been following the water about twenty-years, and have frequently managed and sailed vessels during that time.

I was on board the schooner G. W. Woolston, when she was sunk in the Potomac river, below Smith's creek, on the sixteenth day of December, 1863. I was one of the sailors on said schooner. We had taken in a cargo of 200 tons of coal at Philadelphia for delivery at Washington, in the District of Columbia. She sailed from Philadelphia about two weeks before Christmas, and was in good order and well manned, having five men, including the captain, who was B. B. Williams, who, with J. H. Rowland, were the owners.

27 On Wednesday night, the 16th of December, having come into the Potomac from the bay, and being between 10 and 12 miles from Point Lookout, and just off Smith's creek, on the Maryland shore; the night was cloudy and drizzling rain, and we could see a little of the eastern shore but none of the western; the wind was about east northeast and was blowing a tolerable fair breeze; the course of the schooner was west northwest, the sails were all free, and she was making between four and five knots. We had a very good light under the jib-boom, and there were two men forward as look-outs near the bowsprit; the other two, of whom I was one, were standing aft alongside the captain at the wheel.

Between midnight and one o'clock we saw a steamer coming down the river. When we first saw her she must have been about three quarters of a mile off, and had she kept the course she was then steering she would have cleared us about 100 yards. Her course was southeasterly, and she was to the windward of us. When

28 she was first seen the look-outs reported her to the captain. Our captain kept his course. I reported to the captain that there was a steamboat, and he said he would keep his course, and the way the steamboat was going she would clear us. When the steamer neared us, she altered her course, she ported her helm, and came right in upon us, striking us amidships. About fifteen minutes after she struck us, our schooner sunk in the deepest part of the channel. After the steamer had ported her helm, it was impossible for us to get out of her way. The two lookouts forward ran aft, shouted out and hailed the steamer, calling to the captain to stop her.

The steamer could have seen us and our light for about three quarters of a mile.

While the steamboat was laying upon us, we lowered down our boat and got into it, and from it we got on board the steamer. She was the steamer Baltimore, bound from Georgetown to New York.

The steamer lowered no boats, and gave no assistance. We

29 continued on board the steamer until she got abreast of Point Lookout, where we landed in our own boat the next morning.

From my experience in many years sailing, I am satisfied that if the steamer had not changed her course she would have cleared us, and there was no necessity for the steamer's changing her course, as there was plenty of sea-room; and it was the duty of the steamer to have kept off, as it was our duty to have kept our course, which we

did without variance. It was the steamer's duty to luff, which she did not. It was our duty to keep our course, which we strictly did, without variance, as above stated.

After the steamer got upon top of us, I heard her bell ring, but not before. Our vessel sunk just in her course as she was heading up the river; the steamer being upon her until she sunk. I have seen the schoner twice since she was sunk; the last time I went by her in the steamer Wilson Small, a few days before Christmas. She was then lying in the exact course in which she was steering when
30 she was sunk, and that course is west northwest.

At the time the schooner was sunk the captain could have got six thousand dollars for her.

Coal, such as was on board our schooner, was retailing in Washington in December last at twelve dollars per ton. The freight to be paid upon it, and the usual freight at that time, was two dollars and a quarter per ton.

I was present when the contract for this freight was made, and know that the price was $2 25-100 per ton.

Everything on board the schooner was lost, including the clothing of the crew, the tackle of the schooner, and all her cabin equipments, consisting of mattresses and other furniture. I can give no inventory of it now, but I do not think two hundred dollars would buy what was in the cabin.

The light to which I have referred as being under the jib-boom, and which was also lost, was a good sized globe lantern, nearly as large as a man's hat.

his
JAMES + BEE.
mark.

31 Witness:
EDM'D F. BROWN.

Sworn to and subscribed before me this 16th day of April, 1864; the witness further stating that he is about to go to sea, and out of the jurisdiction of the court.

[COMMISSIONER'S SEAL.] EDM. F. BROWN,
U. S. Commissioner.

[Int. rev. stamp, E. F. B., 16 Apr., 1864.]

No. 7.—*Deposition of Wm. Key, for libellant.—Filed June* 16, 1864.

And the said William Key, being by me first carefully examined and cautioned, and duly sworn according to law to testify the whole truth, and being examined in behalf of the libellants, makes oath, deposeth, and saith as follows, to wit:

I reside in Washington city, and am twenty-seven years of age. I have been following the water eighteen years. I know the schooner J. W. Woolston in Dec'r last. She was owned by James H. Rowland and B. B. Williams. I sailed from Philadelphia in her as
32 one of her sailors, with a load of coal for Washington city, in the month of December last. She was in good order and well

and sufficiently manned and equipped. Her crew numbered four besides the captain. Her cargo was two hundred tons of coal. I saw it shipped.

On the night of Wednesday, the 16th of December, while on said voyage, we were running up the Potomac river, keeping on our course, west northwest, and when opposite Smith's creek, a few miles above Point Lookout, the night being dark, but we were able to see the land both sides of the river, the wind blowing about east northeast, not blowing very hard but about an eight-knot breeze, the schooner steering a west northwest course, the sails all free, and we had a pretty large light under the bowsprit. There were two men forward on the look-out and two men aft with the captain, who was at the helm.

About midnight we saw a steamer approaching about three miles off. She was coming down the river, steering an east south-
33 east course. When she neared us she altered her course more to the southward and westward. She was to the windward of us. Our schooner kept her course, and the steamer struck us on the star board side just about the galley, and the schooner sunk in the course of five minutes. As soon as our look-outs saw the steamer they reported it to the captain, and when it was evident that a collision would take place they hailed the steamer to back her, but they never heard a bell. If the steamer had kept on her first course she would have went a half mile to the windward of us. I I think she was not more than a quarter of a mile off when she altered her course and came down upon us. The schooner sunk right in the channel, and I have seen her twice since she sunk, or rather her mast sticking up above the surface of the water. From the position of the masts she was lying, when I last saw her in the course, that she was being steered directly heading up the river. As our schooner was sinking we got into our boat and got on board
34 the steamer. It was the steamer Baltimore, and hailed from New York. She lowered no boats and gave no assistance. The captain of the steamer was unwilling to stop, and when I got on board the steamer he was unwilling to say to me where he was bound, and I saw he was under the influence of liquor.

The steamer stopped, and I left her in our own boat at Point Lookout.

From my experience as a sailor, I am able to say of the management of the schooner that it was correct and proper, and that the steamer was wholly in fault. From the time that a collision seemed probable the schooner could not have done anything to avoid it.

The two men who were on the forward part of our schooner as look-outs were William mith and John Lomax, and I have, at the request of Captain Williams, been endeavoring to find them to be used as witnesses, but thus far have not succeeded. They follow the water.

I am positive that our schooner never altered her course
35 from the time that she entered the Potomac river. If the steamer had had a proper look-out she ought to have seen our light at least three miles.

The schooner was worth six thousand dollars. Such a schooner could not be bought now for $7,000. Coal was worth at that time twelve dollars per ton in Washington city. The freight on the coal to the schooner was to have been $2 25 per ton.

I cannot give an inventory of the cabin furniture and clothing that was lost on board the schooner, but suppose they would cost about three hundred dollars.

I follow the water and expect to be beyond the jurisdiction of this court at the time of the trial of this cause.

WILLIAM KEY.

Sworn to and subscribed before me the 16th day of April, 1864.
[COMMISSIONER'S SEAL.] EDM. F. BROWN,
U. S. Commissioner.

[U. S. int. rev. stamp, cancelled.]

No. 8.—*Deposition of Purnel Chesser, for libellants.—Filed Feb'y 2, 1865.*

36 And the said Purnel Chesser, being about the age of fifty-seven years, and having been by me first cautioned and sworn to testify the truth, the whole truth, nothing but the truth, in the matter of controversy aforesaid, I did carefully examine the said Purnel Chesser, and he did thereupon depose, testify, and say, as follows, in answer to interrogatories proposed by W. Y. Fendall, esq., proctor for the libelants:

My residence is in Baltimore; my occupation following the water as a pilot; I have been following the water about 47 years, on the Potomac, Rappahannock, James, and other rivers, and Chesapeake bay.

In December, '63, I was piloting on the Potomac river. Between the 15th and 20th of December, 1863, (I don't remember the precise day,) I passed a sunken vessel a little above Cornfield Point on the Potomac river, some 3 or 3½ miles from Point Lookout, her bow pointing directly up the river, about northwest by west, or nearly so; she was on the starboard hand of the channel, but going up the river. In passing Point Lookout we always keep the starboard side of the channel. The sunken vessel had two masts above the water.

37 I was piloting vessels at the time, and was up and down past her two or three days, and went within 100 yards of her. I should think the sunken vessel was about 1½ mile from Cornfield harbor. I cannot state the precise distance, as it is a large harbor. The proper course of a vessel going up the river from that point would be northwest by west.

Cross-examination.

By Nathaniel Wilson, esq., proctor for claimants:

1 x-int. By whom were you summoned to appear here as a witness?

Answer. By Captain Williams. Yesterday, one day last week, he first spoke to me about coming.

2 x-int. By whom are your expenses, while here, paid?

Answer. By Capt. Williams.

3 x-int. What benefit will you derive, should this case be decided in favor of Capt. Williams?

Answer. None at all.

4th x-int. Have you received any money or any promise of any money for your attendance as a witness?

Answer. None at all.

5th x-int. How long did the masts of the sunken vessel of which you have spoken remain visible?

Answer. It was three or four days, and I went away, and did not pass there again for a month or more, and then there was only
38 one mast to be seen.

6th x-int. Did you see the sunken vessel while piloting a vessel up or going down?

Answer. I saw her both ways.

7 x-int. Which way were you going when you saw her first, and in what kind of a vessel were you?

Answer. I was going down when I saw her first, and I was in a pilot canoe.

8th x-int. What course did you pursue down the river, and did you follow the channel?

Answer. I was going down about a southeast course, and was on the port hand of the channel going down.

9 x-int. What is the course of the channel at that point?

Answer. About southeast by east.

10th x-int. What is the proper course for a steamer going down the river at that point?

Answer. I should think about southeast by east.

11th x-int. How wide is the channel there?

Answer. I don't know exactly, but it is pretty wide; I never made any calculation of its width; I should think it was five miles wide there.

12th x-int. How near were you to the masts of the schooner going down the channel?

Answer. I was within 100 yards of it.

39 13th x-int. Who was with you, and what time of day was it?

Answer. I was by myself. I think it was about 9 o'clock in the morning; it was a clear day, and as cold as thunder.

14th x-int. How deep was the water there?

Answer. I did not sound, and do not know.

15th x-int. How far out of the water was the mast?

Answer. About from 10 to 18 feet, I think.

16th x-int. Were the masts perpendicular to the water; and if not, which direction did they lean?

Answer. They were slanting a little—leaning a little to the westward when I saw her.

17th x-int. What distance was between the masts?

Ans. I don't know; I did not notice.

18th x-int. In what direction would a line drawn from one mast to the other be in relation to the direction you were going?

Ans. I don't know. I did not pay attention enough to know.

19th x-int. A line drawn from one mast to the other would represent the course the vessel was pursuing, would it not?

Ans. Well, I suppose it would.

20th x-int. Are you as certain as to the distance of this vessel from Point Lookout as you are of the other matters that you have testified to?

Ans. I never measured the distance, but it is as near as I
40 could come to it. I think it was from 3 to 3½ miles.

21st x-int. How far was the vessel from Smith's creek?

Ans. I should think she was from 2 to 2¼ miles below Smith's creek.

22d x-int. Did you see any other masts of a sunken vessel in the Potomac river in December, 1863?

Ans. Yes, sir; I saw another sunken vessel between St. George's Island and Piney Point, in the same month; I should think between 5 and 8 miles above the one I have been speaking of. It was afterward, between the 20th and 25th of the month, as near as I can remember; the masts stood a long time.

23d x-int. What distance were the masts of the vessel you have just spoken of from Point Lookout?

Ans. I should think it was about from 10 to 11 miles from Point Lookout.

24th x-int. What was the position of the masts of the vessel that you have last spoken of relative to the channel?

Ans. She was laying with her bow up the river on the starboard side of the channel, below Piney Point harbor.

25th x-int. Would a line drawn between the two masts of the last-named vessel represent the course of the channel at that point, and the proper course of a vessel going up the river?

Ans. The last vessel was pointed her bow further in to the
41 eastward, and a vessel coming down the river would strike her on the port side.

26th x-int. What were the points of resemblance and difference between the positions of the two vessels as they lay?

Ans. I should think the first vessel lay, as near as I could come at it, about northwest by west, and this last one lay about north, and may be a little easterly.

27th x-int. What do you judge of the course of the vessels from?

Ans. From the courses that I have steered up and down the river on vessels.

28th x-int. Do you judge of the courses of these vessels by your knowledge of what ought to be the course of vessels at those points?

Ans. I judge from experience.

29th x-int. Can you swear positively to the course of a line drawn from the bow to the stern of either of these vessels, with relation to the course of the channel of the river at either of these points?

Ans. No, sir.

30th x-int. Can you swear positively the starboard side of either of these vessels was not fairly exposed to a vessel coming down the river, and pursuing a course east southeast, or southeast half east?

Ans. No, sir.

31st x-int. State whether, under oath, you can state, with any degree of accuracy, the course that either of these vessels was
42 pursuing at the moment of sinking; and if so, what the course was.

Ans. No, sir; I cannot.

32d x-int. Can you state, under oath, that a line drawn from the bow to the stern of either of the vessels of which you have spoken would represent a course west northwest?

Ans. No, sir.

33d x-int. State, to the best of your judgment, the course that would be represented by a line drawn from the bow to the stern of the vessel of which you have spoken as lying 10 or 11 miles from Point Lookout.

Ans. I should think, from the best of my knowledge, the upper vessel lies about northwest from Point Lookout, with her bow pointing in a little to the eastward. The lower vessel lies about 3 to 3½ miles from Point Lookout, and heading up about northwest by west, or nearly so.

34th x-int. Did you see any other sunken vessel in December, 1863, in that vicinity?

Answer. No, sir; not that I remember.

35th x-int. Might there have been other vessels sunk in that vicinity, not seen by you?

Ans. There might have been.

Direct examination resumed.

Int. If there had been other sunken vessels in the vicinity
43 of those of which you have spoken, and about the time of which you have spoken, is it probable that you would have seen them?

Answer. I think it probable I would have seen them.

2d int. About how far is the upper or second vessel you have mentioned from Piney Point?

Answer. About 1½ or 2 miles.

his
PURNEL × CHESSER.
mark.

Witness:
EDM. F. BROWN.

Sworn to and subscribed before me this 24th day of January, 1865.
[SEAL.] EDM. F. BROWN,
U. S. Commissioner.

[5-cent stamp, 26th Jan., '65.]

44 No. 8².—*Deposition of Henry Holmes.—Filed Feb'y* 2, 1865.

And the said Henry Holmes, being about the age of thirty-five years, and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in the matter of controversy aforesaid, I did carefully examine the said Henry Holmes, and he did thereupon depose, testify, and say as follows, in answer to interrogatories proposed by W. Y. Fendall, esq., proctor for the libellants:

My residence is in Baltimore, Md. My occupation, master of a schooner. In December, 1863, I was captain of the schooner B. N. Fox. I have been following the water about 20 years, and master of a vessel about 14 years. During some of that time I have been sailing on the Potomac river, and particularly during this war. Some time about the middle of the month of December, 1863, I made a voyage with the B. N. Fox, from Havre de Grace to Washington, and during that voyage I passed a sunken vessel, with two masts standing. I passed her a piece above Cornfield harbor, and about 3½ miles from Point Lookout. Judging from the position of her masts, she was heading up the river west northwest. I sup-
45 pose we ran within 20 yards of her. I judge that to be her course from looking at my compass at that time. The proper course of a vessel coming round Point Lookout, and up the Potomac river, with a fair wind, would be west by north. Judging by the masts and the position of the vessel, I judge she was pursuing a proper course. I should judge she was between 5 and 8 miles from Piney Point. I had not heard that the J. W. Woodston had been lost before we left Havre de Grace. I did not see the masts again, as I was frozen up here in Washington. I knew the schooner J. W. Woolston when she was first brought into Havre de Grace, and saw her in Georgetown, the trip before she was lost. If she was mine to-day, I would not take $8,000 for her, if she was afloat. In December, 1863, I think she was worth from $7,000 to $8,000. I have not a particle of interest in this suit.

Cross-examination.

By N. Wilson, esq., proctor for the claimants:

I saw some floating spars about the mouth of St. Gerge's creek.

H. HOLMES.

Sworn to and subscribed before me, this 26th day of Jan'y, 1865.

[SEAL.] EDM. F. BROWN, *Comm.*

[5 cent stamp, 25 Jan., '65.]

46 No. 8³.—*Deposition of Wm. Smith, for libellant.—Filed Feb.* 2, 1865.

And the said William Smith, being about the age of thirty-one years, and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in the matter of

controversy aforesaid, I did carefully examine the said William Smith, and he did thereupon depose, testify and say as follows, in answer to interrogatories proposed to him by W. Y. Fendall, esq., proctor for the libellants:

My residence is Havre de Grace, Md. My occupation is following the water. In the middle of December, 1863, I was a hand on board the schooner J. W. Woolston. Capt. B. Williams was captain of her. I remember when she was sunk in the Potomac river. I was a hand before mast on board of her. We were coming from Philadelphia, bound to Washington, with a cargo of coal. After we hauled round Point Lookout, coming up the Potomac, I was forward; I saw a light, something like a steamer, coming down. I told the captain that I saw a light that I thought was a steamer coming down. He said he saw her. It was about 12 o'clock, midnight. The schooner's light was at the head of the sprit, under the jib-
47 boom. We held our course and hailed the steamer to keep off. She did not keep off, but ran into us about the fore hatch, on the starboard side. After she struck us we had not time to save our clothes, nor anything else. The Woolston sunk in about five minutes. We got into our yawl boat as soon as we could and made for the steamer, and got on board of her. There were five in the crew, including the captain. When we got on board the steamer Captain Williams asked the captain of the steamer why he did not keep his course down the bay. I do not remember exactly what the captain of the steamer told him. William Keys went to the captain of the steamer afterwards and asked him where he was bound, and he told him anywhere and everywhere. I heard him say so. I asked the steward what was the matter with the captain, and he said the captain was drunk. I went in the pilot-house and found the man they told me was the captain, drunk. That was about half an hour after I went on board the steamer. I went in the engine-room after that, and the engineers was laughing about it. I asked them what sort of a man was the captain, and they said he was
48 not fit to be a captain. They said he ought to be turned out of his office.

I am now sailing with Captain John Turner, on the schooner Ocean, and have been since a short time after the Woolston was sunk.

I have no interest in this suit, except that the captain told me that if he got paid for the schooner I should be paid for the clothes I lost on board of her.

Cross-examination.

By Nathaniel Wilson, esq., proctor for the claimant:

I had only been sailing about three months at the time of this collision; myself and John Brooks were on the look-out at the time. When I first saw the steamer I saw a light first on her bow; I think it was a white light; I think that was all the light she had; I don't think I saw another one; I did not see a red, green or blue light; if she had them I honestly did not see them. It appeared to me the steamer

was about a quarter of a mile off when I first saw her; she was to windward of us and appeared to be heading down the river; I don't know what point of the compass she was going. The steamer was on our starboard bow; the schooner was going west, northwest.
49 I did not know the course of the schooner by the points of the compass at the time of the collision. I know a little more about the compass now than I did then; I had been sailing but little time then and did not know anything about the compass or the points on it. No one has since told me as to what course the schooner was sailing at the time she sunk. I have not seen the captain since that time until yesterday. From the time I first saw the steamer's light until the collision it was about 15 or 20 minutes. The steamer struck the schooner about the fore hatch a little forward of midships. I could not tell to save my life how big a hole she struck in her. She went down in about five minutes; we were all on the deck at the time. I could tell by the stars that the schooner did not change her course; there were flying clouds, but we could see some stars. I could not tell the names of the stars rightly; but I know I saw some. I don't think it rained any about that time. I did not notice either shore. I don't think the moon had been shining that night. I had been on deck all night. William Keys, I think, lit the light; it was a lantern, every bit as big as a man's hat—a globe lantern; it was
50 burning at the time of the collision. I did not hear any bell ring on the steamer. The man that was pointed out to me that was drunk was a large man; I don't know the color of his hair; I think he had no beard, but am not certain; he must have been drunk; he acted mighty like a drunken man; he was staggering in the pilot-house; he asked me to come into the pilot-house. I and William Keys went in there; Capt. Williams came in there but did not stay no time. He had a little boy at the wheel; he was not as high as the wheel. The blow of the steamer might have turned the schooner around a little, but I could not tell to save my life. I had been a slave until the second year of the war, when I went into the navy.

his
WILLIAM × SMITH.
mark.

Witness:
EDM. F. BROWN.

Sworn to and subscribed before me this 26th day of January, 1865.
[SEAL.] EDM. F. BROWN,
U. S. Commissioner.

[5-cent revenue stamp, 26 Jan., 1865.]

51 No. 84.—*Deposition of Geo. W. Moore, for libellant.—Filed Feb'y 2, 1865.*

And the said George W. Moore, being about the age of twenty-eight years, and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in the

matter of controversy aforesaid, I did carefully examine the said George W. Moore, and he did thereupon depose, testify and say as follows, in answer to the interrogatories proposed by W. Y. Fendall, esq., proctor for the libellants.

I reside in Havre de Grace, Maryland; I am captain of a schooner, and have been since 1858. I have been following the water about twenty years, trading on the Chesapeske bay and its tributaries. I have been more particularly trading on the Potomac since April, '61. In December, 1863, I was captain of the schooner Sarah Minge, trading from Havre de Grace to Washington. I came up the Potomac river twice in that month, once very early, and the other towards the middle or last of the month. I did not notice any sunken vessel on either trip up; but on my last trip down, having left Washington about the 20th or 22nd of that month, I passed two sunken schooners; the first schoooner was one or one and a half mile below Piney Point, with her sails standing, her main topsail set, she had no foretopsail or topmast; as she lay when she sunk, I
52 suppose she was heading between north and northeast; she was about 10 miles from the upper side of Cornfield harbor, and from 1 to 1½ mile from Piney Point, and between 10 and 12 miles from Point Lookout. I saw one other schooner sunk below that, about a south southeast course from the other vessel, and between 7 and 9 miles from the other vessel. I suppose she was 3½ miles from the eastern port of Cornfield harbor; Point Lookout from the eastern port of Cornfield harbor. At the time I saw this last-mentioned or lower vessel, from the position of the masts, she was, when sunk, heading up the river and pointed about north northwest or thereabouts. I am acquainted with the channel of the river about the locality of the last-named sunken vessel. From the position of the sunken vessel, she was heading up the channel of the river; that is, as near up as I should head were I piloting a vessel; I cannot tell how wide the channel is there, but I should suppose five miles or more. At the point where the last-named vessel was sunk, the proper course of a sailing vessel going up the river was west northwest. This vessel was on the starboard side of the ship channel, but there was plenty of water on both sides of her for a vessel 12 feet
53 draft. When I say on the starboard side of the channel, I mean she was nearer the starboard side than the port. Two masts were above the water. The proper course of the vessel which I have first named, the one lying near Piney Point, was the proper course for a vessel going into the harbor at Piney Point, but not the proper course for a vessel coming up the river. I knew the schooner J. W. Woolston about a year and a half previous to her being sunk; I last saw her about the latter part of November, 1863, when I was on board of her at Georgetown, D. C. From my knowledge of the way vessels were selling at that time, she was worth about from $9,500 to $10,000. Captain Benjamin Williams was at that time in command of her. In December, 1863, hard coal was worth in Washington, by the cargo, about ten dollars per ton.

The lower vessel lying above Cornfield harbor was sunk in 10 or

11 fathoms water, I having steered within twenty yards of her and thrown my lead overboard.

Int. Have you any means of knowing where the J. W. Woolston was sunk, and if so what are those means?

54 (Objected to by Mr. Wilson. To any answer that shall include any conversation that the witness may have had with third parties.)

Answer. I passed a wreck, as before stated, and from my knowledge of the rig and style of the vessel's spars, I believe the lower vessel, lying above and nearest to Cornfield harbor to be the J. W. Woolston. I passed the first vessel going down at about ten o'clock in the morning; we had a quick breeze from north northwest. Before I left Washington that trip, I shipped William Keys on board my vessel, he having been one of the crew of the J. W. Woolston at the time she was sunk.

I have no interest, direct nor indirect, in the result of this case.

Cross-examination.

By Nath'l Wilson, esq., proctor for the claimants:

I cannot say what the schooner J. W. Woolston cost, nor how old she was; judging from appearances I should think she was from 3 to 5 years old; she was called a canal schooner, and was considered a first-clrss canal schooner, and if she was mine I would not take $9,500 for her. I have a schooner something of the same style that I

55 have refused $9,500 for; she cost me $4,750 cash, nearly three years ago; I bought her from C. & F. Lenning, druggist, in Philadelphia. I passed those vessels the day after I left Georgetown.

GEORGE W. MOORE.

Sworn to and subscribed before me this 26th day of January, 1865.
[SEAL.] EDM. F. BROWN, *U. S. Co nm'r.*

[5-cent. rev. stamp, 26 Jan. 1865.]

56 And the said John Brannigan, being about the age of forty-six years, and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in the matter of controversy aforesaid, I did carefully examine the said John Brannigan, and he did thereupon depose, testify and say as follows, in answer to interrogatories proposed to him by W. Y. Fendall. esq., proctor for the libellants:

No. 89.—*Deposition of John Brannigan for the libellants,* 26 *Jan'y,* '67.

My residence is Havre de Grace, Md.; my occupation a sailor, and have been following the water nearly forty years. I am now captain of the schooner Danube, of Havre de Grace. In January, 1864, I was captain of the scchooner William B. Morgan, running from Havre de Grace to Washington. About that time I was coming up the

Potomac river with the wind about northeast, and I passed a sunken vessel about 2 o'clock in the afternoon. She lay off of what we call the Red Banks, a litle below the mouth of Smith's creek, about a mile and a half above Cornfield harbor, and I suppose about 3 or 3½ miles from Point Lookout. I am not familiar with the channel of the river about that point, except for a vessel drawing ten or
57 twelve feet water. We passed tolerably close to her, and from the ripple of the water it appeared like she was laying then about northwest by west; we were running up west northwest. If she was pursuing the course that I have described, that was not the course that I would pursue; she might have been a little slewed. We could only judge by the ripple of the water; she had then only one mast in her. In about six days we passed her again in our return voyage.

(The proctor for the claimants has no questions to ask this witness.)

his
JOHN × BRANNIGAN.
mark.

Witness:
EDM. F. BROWN.

Sworn to and subscribed before me this 26th day of January, 1865.
[SEAL.] EDM. F. BROWN,
U. S. Comm'r.

[5-cent. int. rev. stamp.]
26 Jan'y, 1865.

No. 9.—*Deposition of Capt. Delaney, for libellants.—Filed Feb'y*, 1865.

58 And the said Edward Delaney, being about the age of thirty-seven years, and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in the matter of controversy aforesaid, I did carefully examine the said Edward Delaney, and he did thereupon depose, testify, and say as follows, in answer to interrogatories proposed to him by W. Y. Fendall, esq., proctor for the libellants:

I reside in Baltimore, Md. I am a sailor by occupation. I have been following the water about 23 years, about 14 years of which I have been master of a vessel. I have been sailing on the Potomac river for about 13 years. In December, 1863, I was master of a schooner called The Oneida. I sailed in the Oneida from Baltimore, bound for Alexandria, and in coming up the Potomac river I passed the schooner J. W. Woolston, which was sunk about 2½ miles above Point Lookout. I passed her in the morning early after daylight, about the 11th or 12th of Feb'y, 1864. It was about a mile and a half from Cornfield harbor. The reason I knew it was the J. W. Woolston is, that I knew her spars, and if I had not heard she
59 had been sunk I should have known her by her spars. Both masts were then standing. Judging from the position of her masts, and

the way she lay when sunk she was heading up the river, and was heading about west northwest. At the place were the vessel was sunk, the proper course of a sailing vessel coming up the river was west northwest. The sunken vessel was about a mile or a mile and a quarter from the Maryland shore. I knew the schooner J. W. Woolston, and saw her the day before she was was sunk in Chesapeake Bay; she was bound up the Potomac river. From the appearance of the vessel, I should judge she was worth at that time every dollar of $6,600. Vessel property has advanced, and if she was now in the same condition she was then she would be worth $8,500. I had known the schooner J. W. Woolston for 12 or 13 months before she was sunk, and had frequently seen her. I have no interest whatever in the result of this suit.

Cross-examination.

By Nath'l Wilson, esq., proctor for def'ts:

1st x-int. Did you know that the schooner J. W. Woolston had been sunk at the time you saw the sunken vessel of which you speak?

Answer. Yes, sir; it was reported round.

60 2d x-int. State what there was peculiar in the appearance of the masts of the J. W. Woolston that enabled you to identify them.

Answer. Her masts were painted under the cross-trees, and from the cross-trees up to the head was scraped and varnished; she carried a main topmast, and had none forward. A man that is accustomed to follow the water can always tell one vessel's masts from another, for you will not find a half dozen vessels out of a hundred that are sparred alike.

3d x-int. How far were the masts out of water, and in what position were they?

Answer. To the best of my knowledge, her masts were about 23 feet out of the water; they were perpendicular, standing in their proper place.

4th x-int. Do you swear positively that a line drawn from one mast to the other would represent a course west northwest?

Answer. No, sir; I would not swear that positively, without taking a compass there.

5th x-int. Do you swear positively that the course of such a line would not vary more than half a point either way from a west northwest course?

Answer. No, sir; because when you are sailing by a vessel,

61 if you come within two points either way, you are making a pretty neat calculation.

6th x int. Will you swear that a line drawn from one of the masts to the other would not vary more than two points either way from a west northwest course?

Answer. Yes, sir; I do swear to that.

7th x-int. How near were you to the masts of the sunken vessel?

Answer. I was within about 30 yards of her, so close that I had liked to run into the the spars.

8th x-int. How did it happen that you had liked to have run into her?

Answer. The wind was light, and it was a strong tide, and swept me up towards her.

9th x-int. What course were you sailing at the time?

Answer. We were not on any particular course; we were bound down, and heading about a southeast course when we passed her. This was the second time I passed her. I had been up and landed my cargo, and was coming down.

10th x int. Suppose at the time you came down the Woolston had been afloat in the position indicated by the masts, and you had been pursuing the course you have described, how would you have passed the Woolston?

62 Answer. I should have passed her within about 30 yards, as I did on my port, or the Maryland side.

11th x-int. Were you pursuing the ordinary course of vessels bound down the river?

Answer. That is the direct course of vessels bound down the Chesapeake bay; they steer a southeast course.

12th x-int. Would an extended line drawn from one mast of the sunken vessel to the other cut a line representing your course above or below the sunken vessel?

Answer. I would have crossed her bow the same as I did.

13 x-int. How many times in all did you see the sunken vessel?

Answer. Only twice, to the best of my knowledge.

14th x-int. Did you see any other sunken vessel about that time?

Answer. Yes, sir; I saw one lay about 2½ to 3 miles below Piney Point. I did not notice her sufficiently to say which way she was lying; she was about 3 quarters or a mile from the Maryland shore.

Direct examination resumed.

When I saw the vessel the second time (when I was coming down the river) it was in the daytime; I cannot say the precise
63 time. When I first passed the vessel I was coming up the river, and steering a course west northwest.

[SEAL.] EDMUND DELANEY.

Sworn to and subscribed before me this 14th day of February, 1865.

EDM. F. BROWN,
U. S. Comm'r.

[5-cent rev. stamp.]
14 Feb'y,'65.

And the said Peter Galloway, being about the age of twenty-three years, and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in the matter of controversy aforesaid, I did carefully examine the said Peter Gal-

loway, and he did thereupon depose, testify, and say as follows, in answer to interrogatories proposed to him by W. Y. Fendall, esq., proctor for the libellants:

No. 9.—*Deposition of Capt. Peter Galloway.—Filed Feb.* 17, 1865.

My residence is Havre de Grace, Maryland; my occupation is that of a sailor; I have been a sailor ten years, and a captain of a
64 vessel three years.

In December, 1863, I was captain of the schooner Clara, and was coming in her from Havre de Grace to Washington. I came into the Potomac on a Friday, and was beating up, tacked into Cornfield Point and went about, tacked towards the Virginia shore, and seeing a vessel sunk I went right close to her, within 40 yards. The vessel was a little below Smith's creek, between the wind mill and the yellow bank. The foremast and mainmast was standing, and the topmast was broken off forward. The sails were all there. From the position of the masts the vessel was pursuing a course up the Potomac river northwest by west, at the, the time she sunk, to the best of my judgment. That was the proper course of a vessel coming up the Potomac river. For three years I have been in the habit of bringing vessels up and down the Potomac river.

The sunken vessel was, I think, from 2½ to 3 miles from PointLookout, and between 6 and 7 miles from Piney Point. She lay on the Maryland side of the channel, the starboard side coming up.

At the time I passed the sunken vessel, I thought it was
65 the vessel of Capt. Williams, called the J. W. Woolston, and so remarked to my men. The reason I thought it was the J. W. Woolston was because one part of her masthead was scraped and the other part painted. I had known the J. W. Woolston before that, and had seen her about two weeks before I had saw this sunken vessel. Two days elapsed between the time the vessel was sunk and the time I saw the sunken vessel. When I last saw the J. W. Woolston, I think she was valued at $6,500 to $6,800. If she could have been bought for that money I could have got a man to buy her. I saw her the trip before she was sunk. I think she would have been worth at this time, if kept in good order, about $9,000.

I have no interest, direct or indirect, in the result of this suit.

Cross-examination.

By Nathaniel Wilson, esq., proctor for defendants:

1st x-int. Did you see any sunken vessel or vessels in the Potomac in December, 1863, or January, 1864, other than the one that you have described?

Answer. I did. I saw one one night in December, during my trip going down, between Piney Point and St. George Island,
66 betwen 8 and 9 miles from Point Lookout. As it was night I could not say how she lay. I was about 50 yds. from her,

It was a moonlight night. That and the one I have described were the only ones I saw.

2d x-int. Do you think that a blow sufficient to sink a vessel in five minutes would change her position in relation to the course she was pursuing at the moment of the collision?

Answer. I do not know, unless it should strike her forward or right aft—one or the other. If it should strike her forward amidships it would slew her round; if it should strike aft amidships it would slew her stern around.

3d x-int. Would not any blow, except one square amidships, probably turn a vessel in one direction or other out of her course?

Answer. But a very little.

4th x-int. How do you know what course the J. W. Woolston was pursuing at the time she was struck?

Answer. I was not on board of her, nor in company with her, and therefore I have no right to know.

5th x-int. Has any one told you what course the Woolston was pursuing at the time she was struck?

Answer No, sir.

67 6th x-int. Have you had any conversation with any one in regard to her course or her position when you saw the sunken vessel?

Answer. I have not.

7th x-int. How then did you happen to be here as a witness?

Answer. Capt. Williams asked me if I knew anything about his vessel, and I told him I did. I told him I saw a vessel I took to be his lying there sunk, on her course up the river. He asked me if I could make oath to that. I told him I could.

8th x.int. Did you describe to Capt. Williams the position of the vessel, and when did this conversation take place?

Answer. I did. This conversation took place about three weeks ago. He had previously asked me about it. He and I had talked about it.

9th x-int. What else did he say?

Answer. I heard not only by him, but by others, that he had sued to get damages. He said nothing more that I remember.

10th x-int. Do you know how, or in what way, the position of the sunken vessel affects Capt. Williams' claim?

Answer. No, sir; I have no idea whether it is for him or against him.

68 11th x-int. Did you see the masts of the sunken vessel after the time that you mentioned? If so, when and how often?

Answer. I saw her after I came here and discharged my cargo, and went down the river again. The spars were there and the sails were not, but the masts were in the same position. That was the only time I saw her when both masts were there. I saw her next in the spring, and then one mast was standing. I did not see her afterwards. The masts were upright when I saw them.

12th x-int. What time of the day or night was it when you first saw her?

Answer. About four o'clock in the afternoon. I was within forty yards of her. I suppose she was within a mile or a mile and a quarter from the Maryland shore. I cannot tell how far she was from the Virginia shore, as I do not know how wide the river is there.

13th x-int. What course were you pursuing when you first saw the vessel?

Answer. West by south.

14th x-int. How far were you from the vessel when you first saw her?

Answer. I think we were about one mile from her.

15th x-int. What is the course of the channel at the point where the vessel was sunk?

69 Answer. North west by west, according to my judgment.

16th x-int. How wide is the channel there?

Answer. If you will tell me how wide the river is, I will tell you how wide the channel is.

17th x-int. What is the proper course for a vessel going down the river from Piney Point to Point Lookout?

Answer. Southeast by east if you are out in the channel.

18th x-int. How far is it from Piney Point to Point Lookout?

Answer. I have always heard it called ten miles.

19th x-int. How many times have you been up and down the Potomac river?

Answer. I don't know exactly.

Direct examination resumed.

When I described to Capt. Williams the position of the vessel, I only told him that I thought the sunken vessel was on her course up the river from the way she was laying at that time, and that I thought it was his vessel when I came close to her.

When I first saw the first-named sunken vessel I was about a mile from her. I was coming up the river and tacking west by south, because the wind was ahead.

PETER GALLOWAY.

Sworn to and subscribed before me this 14th day of Febr. 1865.

[SEAL.] EDM. F. BROWN,
U. S. Commr.

[5-cent rev. stamp, cancelled.]

No. 9.—*Deposition of Jacob Galloway.—Filed* 17 *Feb.*, 1865.

70 And the said Jacob Galloway, being about the age of twenty years, and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in the matter of controversy aforesaid, I did carefully examine the said Jacob Galloway, and he did thereupon depose, testify, and say as follows, in answer to interrogatories proposed to him by W. Y. Fendall, esq., proctor for the libellants:

I reside at Havre de Grace, Maryland. My occupation is a sailor, and I have been following the water about seven years. I am the

brother of Capt. Galloway who has testified in this cause to-day, and have sometimes had charge of his vessel, and will myself have charge of a vessel as soon as the river opens.

In December, 1863, I was sailing as mate in my brother's schooner Clara, and about the middle of that month I left Havre de Grace in the Clara, bound for Washington. and in coming up the Potomac river passed a sunken vessel. I think it was about the 18th of that month that I passed the sunken vessel, and I supposed from her spars that it was the J. W. Woolston. She laid between Smith's creek and Cornfield Point, with her two masts above water.
71 Judging from the position of her masts I thought at the time that she was heading northwest by west when sunk. I suppose she was in her proper course. I would have pursued that course.

I had known the schooner J. W. Woolston before that time, and had seen her perhaps three or four times. I thought the sunken vessel to be the J. W. Woolston from her spars, her sails were up. Her mast-head was scraped and varnished, and the lower part of her masts were painted under her cross-trees. At the time I saw the sunken vessel my brother was on the Clara with me, coming to Washington. I again saw the sunken vessel when we were going down the river. I have no interest in this suit.

Cross-examination.

By Nath'l Wilson, esq., proctor for defendant:

1st x-int. How near did you pass to the masts of the sunken vessel in coming up the river?

Answer. About 40 yards; it was in the evening, I think, between 3 and 5 o'clock, perfectly light.

2d x-int. How positive are you as to the course in which the vessel lay, and with what precision can you describe her position?

Answer. We were stretching off with the wind down the
72 river, and were heading then west by south. I judge from our course that she was heading northwest by west.

3d x-int. Can you swear to the course in which the sunken vessel lay, within a point either way?

Answer. I could not, but could within two points.

4th x-int. Do you state positively that her course was within two points either way of a course northwest by west?

Answer. I do, to the best of my knowledge.

5th x-int. How far were her masts out of water, and in what position were they?

Answer. From the distance we were from her, I judge they were 18 feet; they were perpendicular.

JACOB GALLOWAY.

Sworn to and subscribed before me this 14th day of February, 1865; and the proctor for the libellants now (at 10 o'clock p. m.) declares the testimony on his side closed before the commissioner.

[SEAL.] EDM. F. BROWN.

[5-ct. stamp.,
E. F. B., 14, Feb, 1865.]

73 No. 10.—*Deposition of Charles F. White for defendant.—Filed Feb'y 2d*, 1865.

And the said Charles F. White, being about the age of thirty-four years, and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in the matter of controversy aforesaid, I did carefully examine the said Charles F. White, and he did thereupon depose, testify, and say as follows, in answer to interrogatories proposed to him by Nathaniel Wilson, esq., proctor for the defendant:

1st int. State your occupation and residence.

Answer. I am a mariner, and have been for nearly twenty years; my residence is in Brooklyn, New York.

2d int. What was your occupation in December, 1863?

Answer. I was socond mate on the steamer Baltimore, running between New York and Georgetown, D. C., and had been in that capacity since about the 17th of March, 1863.

3d int. State how and when you were on board said steamer on the 16th of December, from the time of her sailing from Georgetown until the collision?

Answer. I was part of the time attending on deck, until about 8 o'clock, when I turned in. At 12 o'clock I came on deck again,

74 when the weather was dark, wind to the eastward; that is, taking in the quarter of the compass from the northeast round.

4th int. State what occurred after you came on deck, and what you did.

Answer. When I came on deck, the officer, Mr. Price, whom I relieved, gave me the course of the vessel as east southeast, and was running for Point Lookout for a harbor. I went forward after getting the direction of the vessel, near the foremast; that was a little after 12 o'clock. Hollywood was standing on the forecastle deck on the port side, and he then sung out, a light ahead, or a sail ahead, I do not recollect which. I seen the object, and looked at it, and I took it to be a schooner at anchor a little on the port bow, about a point; I should judge it was some 300 or 400 yards off; it might have been a little more; I reported it as such to the captain, who was in or very near the wheel-house. I sung out, Port the helm! and heard the answer, "Port." That changed it about a point or a point and a half, which made her course about southeast by east, or southeast half east, and we kept the course until we struck the vessel, which I should judge was about five minutes. From the time I first saw the light, until we struck the vessel, was between 5 and 10

75 minutes, less than 10 minutes.

5th int. Describe the light as you first saw it.

Answer. It was a very poor one, a bright light; that is to say, not a colored light.

6th int. How far could such a light be seen on such a night as the night of the 16th of December?

Answer it is hard for me to judge; may be 300 or 400 yards.

7th int. What course was the schooner pursuing at the time of the collision?

Answer. When I first seen the vessel, I took it to be a vessel laying at anchor for the up tide, and, of course, she must have been heading up the river. The next sight I had of her she shewed herself plain; she stood as directly across our track at right angles as could be, and then it was that the collision occurred.

8th int. State whether the captain and the men of the schooner came on board the steamer.

Answer. They did.

9th int. State whether or not you had any conversation with the captain of the schooner after he came on board the steamer.

Answer. I had.

10th int. State when and where the conversation occurred, and all that was said about the collision.

Answer. The conversation occurred about half an hour after
76 he came on board—on deck near the wheel house. I asked him the name of the vessel, and the owners, and so on, and he answered me accordingly; when I said, Captain, you certainly must have put your helm starboard, when he said, Well, we did when you was going to run into us. That is about all.

(The proctor for the libellant has no questions to ask this witness.)

CH. F. WHITE.

Sworn to and subscribed before me this 30th day of December, 1864.

[SEAL.] EDM. F. BROWN,
U. S. Comm'r.

[5 ct. stamp.,
E. F. B, 30 Dec., 1864.]

77 No. 10.—*Deposition of Capt. Henry Lewis for defendant.—Filed Feb'y* 2, 1865.

And the said Captain Henry Lewis, being about the age of fifty-two years, and been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in the matter of controversy aforesaid, I did carefully examine the said Captain Henry Lewis, and he did thereupon depose, testify, and say as follows, in answer to interrogatories proposed to him by Nathaniel Wilson, esq., proctor for the defendant.

1st int. State residence and occupation.

Answer. My residence is in Georgetown, D. C.; my occupation a mariner; I have been following the water between 35 and 40 years.

2d int. State how you were engaged in December, 1863?

Answer. I was master of the steamer Baltimore, then plying between New York and Georgetown, D. C. I took charge of her on the 19th of April, 1863; before that time I had acted as a captain for about 20 years.

3d int. State at what time the Baltimore left Georgetown on the

16th of December, 1863; for what port bound, and the names of the officers and crew then on board of said steamer.

Answer. She left about 1 o'clock p. m., bound to New
78 York; David J. Price was chief mate; Charles F. White, second mate; Joseph Moore, seaman; Earl Marsh, seaman; James Coventry, seaman; and Thomas Hollywood, seaman; those constituted the deck hands and have charge of navigating the vessel. The engineer's department is separate.

4th int. State what lights the steamer Baltimore carried.

Answer. She carries what we call a mast-head light on the foremast, about 35 feet above the deck; a red light on the port-hand side; a green light on the starboard side. Those are all the signal lights we carry when we are running.

5th int. State the history of the voyage from the time of the departure of the vessel to the time the collision occured, and describe the weather.

Answer. We left Georgetown about 1 o'clock p. m.; stopped a few minutes at Alexandria, and proceeded down the river. We were off Aquia creek at dark, the wind about northeast, and somewhat cloudy; we set our lights at dark; (all the lights above referred to;) at 12 o'clock, midnight, it was very dark; our lights were all set, and the wind about east northeast; the weather was growing more ugly all the time, it had not rained any, and was not
79 foggy. I was on deck somewhere about the wheel-house. It was the hour for changing the watch, and all hands are generally on deck at that hour for a short time. Very soon after 12 o'clock we were abreast of St. George's island, we then headed for Point Lookout for a harbor, on account of the looks of the weather, and were steering east southeast; about 20 minutes after we changed our course about one point or a point and a half; the lookout forward, Thomas Hollywood, either said "a light ahead," or "a vessel ahead," I don't recollect which. Mr. White, the 2d mate, was on deck at the time, forward of the wheel-house; Mr. Price was on deck, but where, I do not recollect. I was standing forward the wheel-house. Joseph Moore was at the wheel. I do not recollect any one else on deck. After Thomas Hollywood said there was a vessel ahead, Mr. White reported that he thought the vessel was laying to an anchor, about one point on the port bow. We then ported our wheel, throwing us about southeast by east; it might have been a little more south, leaving the vessel two points on our port bow. I saw only one small light on the vessel, somewhere forward. It was pretty dark, and we could not tell how far the vessel was from us; it might have been 200 or 300 yards. In a very short time
80 after Mr. White first reported, he reported again that the vessel was running directly across our bow, heading to the southwest. I could not tell exactly what course she was steering, but it was directly across our bow, or nearly so. As soon as we saw she was running across our bow, I ordered the bell to be rung to stop our steamer. I don't know how far distant the vessel was then; it might have been 100 or 150 yards; immediately after we rung the

bell to back her; we were then close to the vessel, and immediately afterwards we struck the vessel on the starboard side, about amidships, as near as I can judge. Directly afterwards the captain and crew came on board our steamer, and we proceeded on down to Point Lookout. The time of the collision was about half-past 12 o'clock. Our steamer backed only for an instant, and then stopped until the crew of the vessel had come on board. Our whistle was not blown, nor our bell rung, because it is not customary to use either for sailing vessels. Our steamer was but slightly injured on the stem.

6th int. State what speed you were going when you first saw the light on the vessel.

81 Answer. I suppose we were going about 8 knots and a half when we first saw the vessel.

7th int. State how soon after you first saw the light on the vessel you could ascertain the course of the vessel.

Answer. I don't know how many minutes, it was not many; it may have been 3 to 5 minutes.

8th int. State what, if any, orders were given between the time of seeing the light and ascertaining the course of the vessel.

Answer. The first order was to port the wheel, then order to keep her steady in the course I have mentioned, about SE. by east, or a little south of that, leaving the vessel two points on our port, judging from their light and their sails, which began to be seen about the time that I gave the order to steady.

9th int. State how the vessel's sails were set.

Answer. They were set with the starboard tacks larboard, or the sails set on the port side.

10th int. State the course of the vessel at the moment before the collision.

Answer. She was heading west southwest or thereabouts, across our bow.

11th int. State the width of the river at the point where the collison occurred, the distance from and the direction of Point Lookout.

Answer. The width of the river from shore to shore is over

82 four miles, I think. It was from 4 to 4½ miles from Point Lookout, and about east southeast.

12th int. State the width and direction of the channel at that point, and the ordinary course a sailing vessel would pursue in coming up the river.

Answer. The navigable channel there, I should think, was three miles wide, or wider. The true direction of the channel from abreast of Ragged Point to its junction with Chesapeake Bay is southeast, half east, or northwest half west, the true middle of the channel.

13th int. What course would a vessel pursue coming up the river with such a wind as was blowing at 12 o'clock on the night of the collision?

Answer. It would be about the course I have stated, northwest half west.

14th int. At what point on the shore would a line representing the course of the vessel strike with reference to Point Lookout?

Answer. It would have taken her over on to the Virginia shore, which was about three miles off.

15th int. If the vessel had sailed northwest half west, and you had continued in the course that you were pursuing at the time you first saw her light, how would you have passed?

Answer. We should have passed her a little distance to our
83 left.

16th int. If the vessel had pursued a course NW. half west, how would you have passed her after you had changed your course?

Answer. We should probably have passed her 300 or 400 feet.

17th int. In what direction was the vessel's bow after she had sunk?

Answer. Heading to the Virginia shore. I could not tell exactly the point, it might be west southwest. I judge she laid in the position of the course she was pursuing.

18th int. In what position did she lay in reference to the channel?

Answer. Nearly across the channel.

19th int. State the course of the steamer from 12 o'clock to the time of reaching Point Lookout, with reference to your usual course at that place.

Answer. Our usual course down at that portion of the river is southeast half east. It differed from our usual course a point and a half. We were steering east southeast, for Point Lookout.

20th int. State whether or not the steamer Baltimore belonged to the New York and Washington Steamship Company.

Answer. She does, according to all that I know of her.

84 21st int. State any other material fact in your possession in relation to the collision.

Answer. I do not know of any other, except that we staid at Point Lookout the balance of the night. There had been a moon that night but it disappeared before 12 o'clock.

Cross-examination, by G. H. Williams, esq., proctor for the libellants.

1st x-int. You have said the night was very dark. How far at the time you saw the schooner's light could such a light have been seen?

Answer. I am unable to say; I don't know what size light it was.

2d x-int. Supposing the light to have been a good sized globe lantern, nearly as large as a man's hat, could it have been seen how far that night?

Answer. I don't know, because I have not had the opportunity of measuring distances of lights.

3d x-int. Could it have been seen one, two, or three miles?

Answer. A light in good order, and exhibited in a proper place, might have been seen a mile on that night.

4th x-int. Did you see the light so soon as Hollywood re-
85 ported?

Answer. I saw it directly after, less than a minute.

5th x-int. Are you able to say how far off that light was the moment you first saw it?

Answer. No, sir; probably 300 or 400 yards off, it may have been more.

6th x-int. How far off was Hollywood from you, and where was he standing?

Answer. Somewhere between 15 and 30 feet from me. He was standing on the forward deck, on the lookout. He was forward of the foremast, but on what exact spot I cannot say.

7 x-int. Did you agree with Mr. White in the opinion that the vessel bearing the light was at anchor?

Answer. I had no opinion about it.

8th x-int. Standing at the wheel-house as you have stated, could you not have seen as well as Mr. White or Hollywood?

Answer. No, sir; not so well.

9th x-int. At the time of the collision did you offer any, and what, assistance to the schooner and her crew?

Answer. No, sir; not at that minute. Before we had time to offer any assistance the captain and his crew were alongside.

10th x-int. Was it sufficiently light for you to have at once seen the result of the collision?

Answer. I don't think it was without a light.

86 11th x-int. Are you to be understood as stating positively that the schooner as sunk lay heading directly across the channel towards the Virginia shore, and have you made at any time any particular examination to ascertain precisely how the fact is?

Answer. No, sir.

Direct examination resumed.

22d int. In explanation of your answer to the last question on the cross-examination, state why you suppose the vessel sunk in a course nearly across the channel.

Answer. It being the course that she was heading at the time of the collision. That is why I supposed that she sunk across the channel.

HENRY LEWIS.

Sworn to and subscribed beore me this 30th day of December 1864.

[SEAL.] EDM. F. BROWN,
U. S. Comm'r.

[5-cent int. rev. stamp, 30 Dec., 1864.]

87 No. 10.—*Deposition of David J. Price for defendant.—Filed Feb'y* 2, 1865.

And the said David J. Price, being about the age of thirty years, and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in the matter of controversy aforesaid, I did carefully examine the said David J. Price, and

he did thereupon depose, testify, and say as follows, in answer to interrogatories propounded to him by Nathaniel Wilson, esq., proctor for the defendants:

1st int. What is your occupation and residence?

Answer. My occupation is that of a mariner, and my residence is Baltimore city?

2 int. State where you were engaged in December, 1863.

Answer. I was first mate of the steamer Baltimore, plying between Georgetown and New York. I had then been mate of that vessel about thirteen months, and had followed the sea about fourteen years.

3d int. State how many trips you have made on the Potomac up to that time.

Answer. About twenty passages.

4th int. State whether or not you were on board the Baltimore as mate on the 16th of December, 1863; and if yea, state briefly the history of the voyage after leaving Georgetown, to the time of her arrival at Point Lookout.

88 Answer. I was on board of her at that time as first mate. She left Georgetown about noon on the 16th of December, bound to the port of New York, the steamer being one of the line of the New York and Washington Steamship Company. We proceeded down the river without any incident until about 12 o'clock, midnight. At 12 o'clock at night we were down about the lower end of St. George's island; 8 bells were struck and the watch called. I was forward the pilot-house. It was a very dark night, the sky overcast, the wind about northeast, or east NE. The captain gave me orders to clear away the port anchor with range of chain, that he intended to come to in Cornfield harbor. After 12 o'clock we kept the vessel at east southeast. That course would not run us into Cornfield harbor. The captain remarked at the time he gave me the order that he did not think the night fit to go down the bay. That course would have taken us very near the shoal of Point Lookout. The situation of the ship would not allow us to run direct to Cornfield harbor, but it was necessary for us to go down the river until we were

89 abreast of it or nearly so. About 25 minutes past 12 a vessel was reported on the port bow. The captain ordered the helm put port. The helm was kept port until the ship went off a point or a point and a half. When the order was given to port the helm I saw the light, which was two points or 2½ points on the port bow. I suppose the light was 350, or may be 400, yards off of us. It was what we call a white light; I should suppose a small lantern. The reason why I suppose so, is because I saw the vessel just as soon as I saw the light. When I first saw the vessel I suppose she was steering west northwest. From the time our vessel was put port until the collision occurred was three to five minutes. We struck the vessel on her starboard side forward of her main rigging, nearly amidship. She sunk in about three minutes, I suppose, and in the same course she was pursuing. She was crossing our bow when we struck her. I heard Captain Lewis give the order to stop our steamer,

and I was in the wheel-house and rang the bell to stop her. I went into the wheelhouse about 30 seconds before the collision and about 3 or 4 minutes from the time I first saw the vessel. From the time the light was reported until I went into the wheel-house I
90 should suppose was 5 or 6 minutes. As soon as the ring was clear of the bell to stop her, I rang the bell to back her. I don't know that the engine worked back before we struck her. The speed of the steamer at the time the helm was put port was about from 7 to 8 knots, I suppose. We laid by the vessel about 20 minutes. I sung out to them on the vessel not to be frightened, that we would save them. I did not get any reply. I gave orders to clear away one of our boats immediately after we struck her. They lowered a boat before we did, and then I saw no need of our lowering, and ordered our men to hold on. I then gave a lamp to one of our men to go down into the forecastle and see what our damage was. In about three minutes he came back to me and reported that he could not see any damage inside; he could not see any water running in. About that time their boat came alongside with five men in it, which they said was all their crew. I did not ascertain the captain's name; I don't recollect they told me any name of the schooner, except Woolston.

91 5th int. State whether or not you had any conversation with the captain of the schooner after he came on board the steamer relative to the collision; and if yea, state what the conversation was.

Answer. I did have conversation with him. The captain seemed to blame us for the collision. I told him that I could not decide anything about that. I told him that such collisions had occurred before, and there was no one to blame any more than he was; that he ought to have kept his course, that he knew that he altered it. He told me that he did, for he saw that we were going to run into him. I believe that about ended our conversation. The captain of the schooner was a white man. I should take the other four to be negroes; one was a bright mullatto. We then sailed down near Point Lookout and remained there till morning.

I suppose it was about 3½ miles from the lighthouse where the collision occurred; I do not know anything else material to the case that I could state.

(Mr. Fendall, proctor for the libellants, has no questions to ask this witness.)

DAVID J. PRICE.

Sworn to and subscribed before me this 31st day of December, 1864.

[SEAL.] EDM. F. BROWN,
U. S. Comm'r.

[Int. rev. stamp]

92 No. 10.—*Deposition of Joseph Moore for defendants.—Filed Feb'y 2, 1865.*

And the said Joseph Moore, being about the age of twenty-three years, and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in the matter of controversy aforesaid, I did carefully examine the said Joseph Moore, and he did thereupon depose, testify, and say as follows, in answer to interrogatories proposed to him by Nathaniel Wilson, esq., proctor for the defendant:

1st. int. State your occupation and residence.

Answer. My occupation is a seaman; and my residence is in New York city. I have been nine years a seaman.

2d. int. State whether or not you were on board the steamer Baltimore in December, 1863; and if yea, state how you were employed.

Answer. I was on board of her, and was employed as a seaman; I had been on board of her about two months previous to that time.

3d. int. State if you were on deck at 12 o'clock on the night of the 16th Dec., 1863; and if so, state on what part of the vessel you were.

Answer. I was on deck at 5 minutes past 12, at the time of changing the watch. I went to relieve the man at the wheel. We were
93 then steering east southeast until 25 minutes past 12, when the captain gave me orders to port the wheel. I done so and changed her course nearly a point and a half. He then gave orders to steady her. We were then steering southeast half east, nearly till we came in close connection with the schooner. We were about 100 yards from the schooner when Mr. Price came and took the wheel. I was alongside of him and heard the captain give him orders to stop the steamer. He did stop her. The next orders was to back her. I could not tell whether she backed. She struck soon after; she struck the schooner about amidships. I never knew the name of the captain or of the schooner. Our steamer then went on to Point Lookout, and from there to New York, without any further accident. It would be hard for me to judge what course the schooner was steering at the time.

Cross-examination.

By W. Y. Fendall, esq., proctor for libellants:

1st x-int. How long after the collision did the schooner sink, at what speed was the steamer then going, and did the schooner sink in the same course she was then steering?

Answer. I could not tell how long. It might be 2 seconds, it might be 3 seconds. At the time of the collision the steamer
94 was going about four and five knots. I cannot say whether she sunk in the same course she was then steering.

2d x-int. What time elapsed between the time when you first saw the schooner and the time that she sunk?

Answer. I suppose not more than 2 or 3 minutes.

3d x-int. Who first sung out that a vessel was in sight, and how long was that before the collision?

Answer. Thomas Hollywood first sung out that a vessel was in sight. I suppose it was about 5 minutes before the collision.

Re-direct examination.

4th int. In reply to the first question on the cross-examination, do you mean to state that the steamer was going 4 or 5 knots an hour after the bell had been rung to back her?

Answer. Yes; that was according to my judgment.

JOSEPH MOORE.

Sworn to and subscribed before me this 31st day of December, 1864.

[SEAL.] EDM. F. BROWN,
U. S. Comm'r.

[5 int. rev. stamp, E. F. B., Dec. 31, 1864.]

95 No. 10.—*Deposition of Earl Marsh for defendant.—Filed Feb'y 2, 1865.*

And the said Earl Marsh, being about the age of forty-five years, and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in the matter of controversy aforesaid, I did carefully examine the said Earl Marsh, and he did thereupon depose, testify, and say as follows, in answer to interrogatories proposed to him by Nathaniel Wilson, esq., proctor for the defendant:

1st int. State your occupation and residence.

Answer. My occupation is a seaman; my residence in the city of New York. I have been a seaman 29 years.

2d int. State whether or not you were on board the steamer Baltimore on the 16th of December, 1863; and if yea, in what capacity.

Answer. I was on board of her in the capacity of seaman. I had then been on board of her about three months.

3d int. State what you saw of the collision between the steamer Baltimore and a schooner on the night of the 16th of December, 1863.

Answer. I was on board of the Baltimore, bound from Georgetown to New York. I stood watch from 8 to 12 on that night. After I
96 was relieved they gave orders for us to clear away the port anchor. After that was cleared away I went below. Just as I got below I heard them sing out, "a schooner ahead," or a light ahead," I don't remember which. Shortly after I heard them say "port the helm;" I suppose it was less than half a minute. I stopped below 2 or three minutes, and then came on deck again. When I came on deck, I saw a vessel coming direct across our bows. She was about 50 yards off, or a little more. In a few seconds we

struck her; she went down in a minute or a minute and a half, I should think; she went down exactly as she was steering. I was standing looking over the bulwarks of the steamer looking forward, and saw her sink.

Mr. Price gave orders to lower the steamer's boat, and then we saw their boat coming round our bows, and he told us to hold on. They pulled round on our port side, and came on board our steamer, the captain and four colored men. The steamer then proeeded down the river to Point Lookout. Before the collision I did not hear any one call or shout from the schooner.

At the time of the collision the steamer was going at from 3 to 5 knots; I believe I saw the light on the schooner. It was a
97 small hand lantern, such as we carry about decks with us. I cannot say how far such a light could be seen a dark night. I could not make any calculation of the distance we could see it. It was hanging, I should think, under the bowsprit. The captain of the schooner, when he came on board, said, when I said to him, Why did you keep your vessel off? He said he did keep her off some, but he could not tell how much he did keep her off. That is about all he said.

4th int. Explain what you mean by keeping her off.

Answer. Supposing the wind was on his starboard side as he was coming up the river, and if he put up his helm starboard he would be keeping his vessel off.

Cross-examination.

By W. Y. Fendall, esq., proctor for the libellants:

1st x-int. State what time elapsed between the time you left the deck and the collision, and how long had you been on deck when you returned before the collision took place.

Answer. I should think between 2 and 4 minutes. When I returned I had been on deck a very few seconds before the collision took place.

2nd x-int. What length of time elapsed between the collision and the time of the captain's coming on board the steamer?
98 Answer. Between 2 and 5 minutes, I should think.

3d x-int. How was the wind then, and what course was the steamer pursuing, and what was the course of the schooner?

Answer. I believe the wind was from the northward and eastward. I cannot tell what course the steamer was pursuing. I cannot tell what was the course of the schooner, tho' I know she was coming right straight across us.

4th x-int. At the time of the collision who was on the watch, if any one, and where was he stationed?

Answer. Thomas Hollywood was on the watch. I cannot state where he was stationed; when I came up he was alongside the foremast.

5th x-int. At the time of the collision were there any lights set on the steamer? If so, where were they set, and what kind of lights were they?

Answer. There was a bright light at masthead about 30 to 35 feet above the deck, and a red light on her port side, and a green light on her starboard side. The light on the masthead was a large signal lantern.

6th x-int. Have you been present and heard the examination of the other witnesses produced on the part of the defendant in this cause, and have you considered with them or any of them in
99 regard to the same?

Answer. I have a part of them. I believe I have been out a part of the time. I think I have not conversed with any of them in regard to the same.

EARL MARSH.

Sworn to and subscribed before me this 31st day of December, 1864.

[SEAL] EDM. F. BROWN,
U. S. Comm'r.

[5 Int. rev. stamp, 1864, 31 Dec.]

No. 10.—*Deposition of Alexander Hunter, for defendant.—Filed Feb'y 2, 1865.*

100 And the said Alexander Hunter, being about the age of 39 years, and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in the matter of controversy aforesaid, I did carefully examine the said Alexander Hunter, and he did thereupon depose, testify, and say as follows, in answer to interrogatories proposed to him by Nathaniel Wilson, esq., proctor for the defendant.

1st int. State your residence and occupation.

Answer. I reside in Philadelphia, and my occupation at present is captain of the steamship Fairbanks.

2d int. What was your occupation in December, 1863?

Answer. I was then captain of the steamship Empire, of the New York and Washington Steamship Company. I had been on said steamer more than a year.

3d int. State if the steamship Empire made a voyage from Georgetown to New York about the middle of December, 1863, and whether during said voyage a sunken vessel was passed; and if so, describe the locality of such sunken vessel.

Answer. I cannot exactly remember the date, but think it was somewhere about that time. After passing Piney Point about half-past four in the afternoon, we steered southeast half east, a direct line for Smith's Point light-boat; when about off the upper
101 side of Cornfield harbor—it was then about half-past 5 o'clock—the man on the look-out reported that we were running over something. I asked him where it was, and he said there was some on each side of us, that we had gone between. I then went astern and I saw that we had passed between a schooner's masts that was lying there sunk, and I noticed that she headed to the Virginia shore;

she looked to be heading south, a little westerly, directly across the river. After I got to New York I mentioned the circumstance of having passed a sunken vessel, and they said it was the same one that the Baltimore had come into collision with.

(The latter part of this answer objected to by Mr. Fendall, proctor for the libellants.)

4th int. Describe the position of the sunken vessel, with relation to the direction of the channel at that place, and the true course of a vessel going up the river with a fair wind.

Answer. There is plenty of room there; the vessel was nearly on a right angle with the channel of the river at that point, and with the true course of a vessel going up or down the river with a
102 fair wind.

5th int. How far was the vessel from Cornfield harbor?

Answer. I should think about two and a half miles.

6th int. Within how short a distance can a steamer, going at the rate of 8 or 9 knots an hour, be stopped?

Answer. There is a difference in different vessels. I should not suppose that any vessel of the size of the Baltimore could be stopped inside of 150 yards, she being a propeller.

(Cross-examination reserved.)

ALEX. HUNTER.

Sworn to and subscribed before me this 13th day of January, 1865.

[SEAL] EDM. F. BROWN,
U. S. Comm'r.

[Int. rev. stamp, January 18, 1865, E. F. B.]

The proctor for the libellants waives any cross-examination of the above witness. EDM. F. BROWN,
U. S. Comm'r.

No. 11.—*Deposition of J. G. Dobbins, for defendant.—Filed March* 27, 1865.

103 And the said Joseph G. Dobbins, being about the age of thirty-nine years, and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in the matter of controversy aforesaid, I did carefully examine the said Joseph G. Robbins, and he did thereupon depose, testify, and say as follows, in answer to interrogatories proposed to him by Nathaniel Wilson, Esq., proctor for defendant:

I am a seaman, and reside in Baltimore, Md. I have been captain of a vessel since 1843, and have sailed much on the Potomac river during that time.

In December, 1863, I was mate of the steamer Empire. In January, 1864, while mate of said steamer, the steamer made a voyage from Georgetown to New York, under command of Capt. Alexander Hunter. At the time we were passing the guard ship at Piney Point I was in the pilot-house directing the wheelsman, and gave him his

course southeast half east; we kept that course until we got
104 down to Smith's Point. While steering in that course, and before we got to Smith's Point, I felt something strike the vessel, and just then the look-out forward sung out to me that it was a vessel's masts, and I jumped out of the wheel-house and saw that we had run right between the masts of a sunken vessel. I said at the time that it was remarkable that we should steer right between the masts and never hurt anything. This was about four miles from Point Lookout; I cannot tell exactly.

The proper course of a vessel coming up the river with a fair wind would be northwest half west; such a course pursued by a vessel coming up the river would have carried her right between the masts of a sunken vessel.

On subsequent trips I saw one mast of the sunken vessel several times.

Cross-examination.

By W. Y. Fendall, esq., proctor for libellants:

In January, 1864, I believe that the steamships Empire and
105 Baltimore belonged to the same company, and I believe they do still. I am still in the employ of that company.

I think it was between 9 & 10 o'clock at night that the steamer Empire ran between the masts of the sunken vessel. She was then going at about 7 knots per hour; it might be more. It was not a very dark night; the stars might have been out, some of them. Before that I had been sailing in the Empire from 10 to 12 months. I did not notice the masts of the sunken vessel on any trip before the time which I have already described.

X-int. When did you next make a trip from Georgetown to New York on the steamer Empire?

Answer. We average about two trips a month, and I judge it was about two weeks after. On my second trip I do not recollect seeing the masts of the sunken vessel. I cannot tell what time in January
106 it was that I left Georgetown. When I first passed the sunken vessel I judge it was in the month of January—I cannot swear that it was; it may have been either before or after the month of January. I judge the sunken vessel was about four miles from Cornfield harbor, and about from 10 to 12 miles from Piney Point. I judge, from the position of the vessel, that she was heading for the Virginia shore; the river there is about 10 miles wide; she was about four miles from the Maryland shore. I cannot state who was at the wheel nor who was on the lookout when the steamer passed between the masts of the sunken vessel—that is, I cannot tell their names.

X-int. Had you, about the time you passed between the masts of the sunken vessel, seen any one on the look-out?

Answer. I had.

X-int. Who had you seen?

Answer. I saw a sailor-man; I do not know his name; I saw the

man all the time, off and on; I saw the masts of the sunken
107 vessel as the steamer passed through them; I was on deck at the time, and I believe most of the officers were. I did not notice any other sunken vessel going down the river that I recollect about that time, nor coming up.

X-int. Have you conversed with Captain Hunter in regard to the testimony he gave, or was to give, in this case?

Answer. No, sir; I did not ask Capt. Hunter what he was going to do, nor did he tell me what he testified to, nor do I recollect whether or not he has spoken to me about it. I have neither read, nor heard read, the testimony which Capt. Hunter gave in this case; I do not know a word he said.

JAS. G. DOBBINS.

Sworn to & subscribed before me this 25th day of February, 1865.
[SEAL.] EDM'D F. BROWN,
U. S. Commissioner.

[Int rev. stamp. E. F. B. 25 Feb., 1865.]

108 No. 11.—*Deposition of Peter Berry.*—*Filed March* 27, '65.

And the said Peter Berry, being about the age of sixty years, and having been by me first cautioned and sworn to testify the truth, the whole truth, & nothing but the truth, in the matter of controversy aforesaid, I did carefully examine the said Peter Berry, and he did thereupon depose, testify, and say as follows, in answer to interrogatories proposed to him by Nathaniel Wilson, esq., proctor for the defendants:

1st. int. What is your name, occupation, and residence?

Answer. My name is Peter Berry; my occupation, a commission merchant; my residence, Georgetown, D. C.

2nd int. Are you acquainted with Capt. Henry Lewis, now in the employ of the Washington and New York Steamship Company? And if yea, how long have you known him, and what means have you of knowing his reputation as a seaman?

Answer. I know Capt. Lewis, and think I have had business with
109 him, in the way of shipping, since 1845. I have no personal knowledge of his seamanship, only from his general character; he was noted as one of the finest captains in their employ. I always considered when I made a shipment by Capt. Lewis that it was in the very best hands.

3d int. What was, and is, Capt. Lewis' reputation and character for correctness & sobriety of conduct?

Answer. I have always considered him a very correct man, and his reputation and character for correctness and sobriety of conduct is good, as far as I know; I have generally seen him when he came to Georgetown.

4th int. Have you ever heard anything in the community in which you reside derogatory to his character for seamanship and sobriety?

Answer. I have not.

Cross-examination.

By Mr. W. Y. Fendall, proctor for the libellants:

1st x-int. Do you know what has been the character of
110 Capt. Lewis for sobriety during the last two years?

Answer. I believe it has been good; I have never heard anything to the contrary.

PETER BERRY.

Sworn to and subscribed before me this 9th day of March, 1865.

EDM'D F. BROWN,
U. S. Commissioner.

[COMMISSIONER'S STAMP, D. C.]
[Int. rev., E. F. B., 9 March, 1865.]

No. 11.—*Deposition of Joseph Moore, for def't.—Filed March* 27, '65.

And the said Joseph Moore, being about the age of 23 years, and having been by me first cautioned and sworn to testify the truth, the whole truth, & nothing but the truth, in the matter of controversy aforesaid, I did carefully examine the said Joseph Moore, and he did threupon depose, testify, and say as follows, in answer to interrogatories proposed to him by Nathaniel Wilson, esq., proctor for the defendants:

111 1st int. Have you been examined before in this cause, the case of Rowland & Williams against the steamer Baltimore?

Answer. I have.

2nd int. Where were you at the time of the collision of the steamer with the schooner Woolston, on the night of the 16th of December, 1863?

(Objected to by Mr. Fendall.)

Answer. I was at the wheel.

3d int. How long did you remain there, and were you there when the men came on board the steamer from the schooner?

Answer. I remained there until my two hours were up, at 2 o'clock. I was there when the men came on board the steamer from the schooner.

4th int. Did any one from the schooner come into the wheel-house while you were there?

Answer. I believe the captain of the schooner went in, but he did not stay there no time; he went right out again.

5th int. Did any colored men come into the wheel-house during that time?

Answer. No, sir; I don't believe they did.

112 6th int. During that time did Capt. Lewis stagger about the wheel-house?

Answer. He was not in the wheel-house at that time; he was outside, standing against it; that was his place.

7th int. Did you see him staggering outside of the wheel-house?

Answer. No, sir.

8th int. At the time of the collision was Captain Lewis drunk? If not, what was his condition and behavior?

Answer. No, sir, I don't think he was; he was the same as ever; I saw no difference in him.

Cross-examination.

By W. Y. Fendall, esq., proctor for the libellants:

1st x-int. During the voyage from Georgetown to New York, when the Baltimore came into collision with the Woolston, did the captain appear to be under the influence of liquor?

Answer. I don't know; I did not take notice whether he was or not.

2d x-int. Can you say that he was not?

Answer. I think I cannot say whether he was or not.

113 3d x-int. Did his manner and deportment show that he had been drinking?

Answer. No, sir; the same as ever. I cannot tell whether he was drunk or not.

4th x-int. Can you swear, that while you were in the wheel-house, from 12 to 2 o'clock, that no one from the schooner came into the wheel-house except the captain?

Answer. While I was there no one came there except the captain, that's certain, that I seen. I was not paying much attention to it.

5th x-int. Did you see the captain of the schooner when he came into the wheel-house and when he went out; and with whom did he converse while he was in there?

Answer. Yes, sir. He conversed with nobody that I seen.

6th x-int. Did you hear the captain of the steamer conversing with any one outside of and near the wheel-house?

Answer. I did not.

7th x-int. During the time you were at the wheel, was the door of the wheel-house closed?

Answer. Yes, sir.

8th x-int. Do you know whether any liquor was on board the steamer during the trip to which you have testified?

114 Answer. No; I do not know.

9th x-int. Were you present to-day during the time that Capt. Lewis testified in this cause, and did you hear his evidence?

Answer. I was present and heard his evidence. I took no notice of what he was saying.

10th x-int. Do you or not know whether Capt. Lewis carried liquor with him for his own use, usually, when he made a voyage in the steamer?

Answer. I do not know.

11th x-int. Was the manner and appearance of Capt. Lewis at the time of the collision any different from that which he exhibited when he left Georgetown?

Answer. I saw no difference in him.

JOSEPH MOORE.

Sworn to and subscribed before me this 9th day of March, 1865.
[SEAL.] EDM'D F. BROWN,
U. S. Commissioner.

[E. F. B., 9 March, 1865.]

115 No. 11.—*Deposition of Ch. F. White, for def't.—Filed March 27, '65.*

And the said Charls F. White, being about the age of 34 years, and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in the matter of controversy aforesaid, I did carefully examine the said Charles F. White, and he did thereupon depose, testify, and say as follows, in answer to interrogatories proposed to him by Nathaniel Wilson, esq., proctor for the defendant:

1st int. Have you been examined before in the case of Rowland & Williams against the steamer Baltimore?

Answer. I have.

2nd int. State if you observed any peculiarity in the conduct of Captain Lewis, and in his management of the steamer, from the time she left Georgetown until the time of the collision?

Answer. Not any during the time that I was on deck.

3d int. What was his condition, and what was his conduct, as to sobriety, during that time?

Answer. His conduct was right, and his condition was right.

116 *Cross-examination.*

By W. Y. Fendall, esq., proctor for the libellants:

1st x-int. Did you, at any time during the trip to which you have testified, notice anything in the conduct or appearance of Capt. Lewis which lead you to believe that he had been drinking?

Answer. Drinking what?

2d x-int. That he had been drinking any intoxicating drink?

Answer. No, sir; none whatever; nor anything in his appearance that showed he had been drinking anything else.

3d x-int. Was his conduct and appearance at the time of the collision very different from that which he exhibited when he left Georgetown?

Answer. No, sir; none that I could see.

4th x-int. Did you see him at the time of the collision; and if so, where was he?

Answer. I did; he was standing against the wheel-house.

5th x-int. Have you been present this evening, during the examination of Messrs. Hopkins, Marsh, and Moore, and did you
117 hear their testimony in this cause?

Answer. I was present, and heard their testimony.

CH. F. WHITE.

Sworn to and subscribed before me this 9th day of March, 1865.
[SEAL.] EDM'D F. BROWN,
U. S. Commissioner.

[Int. rev. stamp, E. F. B., 9 March, 1865.]

No. 11.—*Deposition of Earl Marsh, for def't.—Filed March* 27, 1865.

And the said Earl Marsh, being about the age of 46 years, and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in the matter of controversy aforesaid, I did carefully examine the said Earl Marsh, and he did thereupon depose, testify, and say as follows, in answer to interrogatories proposed to him by Nathaniel Wilson, esq., proctor for the defendant:

1st int. Have you testified before in the case of Rowland
118 & Williams against the steamer Baltimore?

Answer. I have.

2nd int. State what, if any, peculiarities you noticed in the behavior of Capt. Lewis, or in his management of the steamer, from the time she left Georgetown until the time of the collision?

Answer. I saw no difference in him from what I had seen in the 3 or 4 months previous, nor in the management of his ship. He was the same in every respect.

(Mr. Fendall has no questions to ask this witness.)

EARL MARSH.

Sworn to and subscribed before me this 9th day of March, 1865.

[SEAL.] EDM'D F. BROWN,
U. S. Commissioner.

[E. F. B., 9 March, 1865.]

119 No. 11.—*Deposition of Capt. H. Lewis, for def't.—Filed March* 27, 1865.

And the said Capt. Henry Lewis, being about the age of years, and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in the matter of controversy aforesaid, I did carefully examine the said Capt. Henry Lewis, and he did thereupon depose, testify, and say as follows, in answer to interrogatories proposed to him by Nathaniel Wilson, esq., proctor for the defendant:

1st int. What is your name, occupation, and residence?

Answer. My name is Henry Lewis; my occupation is a mariner; my residence, Georgetown, D. C.

2nd int. Were you in command of the steamer Baltimore on the 16th of December, 1863, at the time of her collision with the schooner J. W. Woolston; and if yea, has your deposition been taken heretofore, concerning the circumstances of said collision?

Answer. I was in command of the Baltimore at that time, and my deposition concerning it has been taken.

120 3d int. State whether, shortly after the collision, or at any time during the night, you had any conversation with a colored man that was taken on board the steamer Baltimore from said schooner; and if yea, state what that conversation was.

(Objected to by Mr. Fendall.)

Answer. I had a few words with one of them. I asked him what was the name of the schooner, and he said it was the J. W. Woolston, loaded with coal, bound to Washington; and that is all the conversation I had with any colored man, except that I asked them all to go down in the cabin and take something to eat, and they all ran down and took something.

4th int. Shortly after the collision, or at any time during the night, did any one of the colored men taken on board the steamer approach you and say, "Captain, where are you bound, and where are you steering?" or words to that effect; and if such a question was asked, did you say, in reply, "Anywhere and everywhere?"

Answer. No one approached me and asked such a question, and I did not give any such answer.

5th int. Did any one of the negroes taken on board go into the wheel-house while you were in the wheel-house?

121 Answer. No, sir; we do not allow any one to go in there but those who belong to the ship and have business in there.

6th int. State whether you were in any degree under the influence of liquor on the night of the collision, at the time of and prior to the collision.

Answer. I took a drink of brandy with Mr. Rinehart before I left Georgetown, and took none afterwards prior to the collision. I had no liquor in the vessel.

Cross-examination.

By W. Y. Fendall, esq., proctor for the libellants:

1st x-int. Where did the conversation which you have narrated occur?

Answer. It was on deck, not far from the wheel-house.

2d x-int. Can you or not state whether, at that time, you were in the wheel-house?

Answer. I was on deck, and not in the wheel-house.

3d x-int. Can you swear positively that you have stated the only conversation which occurred between you and any colored man

122 who came from the Woolston, and that you have stated the whole of that conversation and the precise words used?

Answer. No. I would not swear positively, because I might have spoken a word to some other colored man. As far as I recollect, I have stated the whole of the conversation that I had with the colored man, and the precise words used. I did not say a word to any other colored man about the ship or about the collision.

4th x-int. Had you taken anything to drink on the day you left Georgetown, other than that of which you have testified?

Answer. No, sir; not to my recollection.

5th x-int. Can you swear positively that you did not?

Answer. To the best of my recollection I did not.

6th x-int. Can you swear positively that you took nothing to drink from the time you left Georgetown up to the time of the collision?

Answer. Yes, sir.

HENRY LEWIS.

Sworn and subscribed before me the ninth day of March, 1865.

[SEAL.] EDM'D F. BROWN,
U. S. Commissioner.

[Int. rev. stamp.]

123 No. 11.—*Deposition of L. T. Hopkins, for def't.—Filed March 27, '65.*

And the said Lewis T. Hopkins, being about the age of 48 years, and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in the matter of controversy aforesaid, I did carefully examine the said Lewis T. Hopkins, and he did thereupon depose, testify, and say as follows, in answer to interrogatories proposed to him by Nathaniel Wilson, esq., proctor for the defendant:

1st int. What is your name, residence, and occupation?

Answer. My name is Lewis T. Hopkins; my residence, Baltimore, Md.; my occupation, an engineer.

2d int. Where and how were you engaged on the 16th of December, 1863?

Answer. I was chief engineer of the steamer Baltimore.

3d int. Where were you at the time of the collision of the steamer with a schooner, on the night of the 16th of December, 1863?

Answer. I was in my room on deck.

4th int. How soon after the collision did you go into the engine-room?

124 Answer. In a few seconds; as soon as I could get in there.

5th int. How long did you remain in the engine-room?

Answer. I remained there about five hours after that.

6th int. At any time while you were in the engine-room did a colored man, taken from the vessel that was sunk, come in or near the engine-room? and if so, was there any conversation between yourself and any colored man, or did you hear any conversation between a colored man and any other person, concerning Capt. Lewis?

Answer. There was no colored man came in. They passed by on deck, but there was no conversation that I heard.

7th int. Who was with you in the engine-room?

Answer. The 1st and 2d assistant engineers. The 2nd only remained about an hour, and the 1st remained about five hours, till the men went ashore.

8th int. During the time that you were there, did you say, or did you hear any one in or near there say, that the captain of the Baltimore was not a fit person to command a vessel, or words to that effect?

Answer. I did not say so, and I have no recollection of
125 hearing any one else say so.

9th int. If such a remark had been made in or near the engine-room would you not have heard it, and would you not remember it?

Answer. Well, I think I should.

10th int. At any time between the hour the steamer left Georgetown and the hour of the collision, did Capt. Lewis appear to be in any degree under the influence of liquor?

Answer. Well, I think he had been drinking.

11th int. Did he appear to be so much intoxicated as to interfere with the management and conduct of the vessel?

Answer. I did not think he was.

12th int. Was the vessel properly conducted, and conducted as usual, so far as you observed?

(Objected to by Mr. Fendall.)

Answer. It was, to the best of my knowledge.

At 5½ p. m. adjourned to 8 p. m.

EDM'D F. BROWN,
U. S. Commissioner.

Met at 8 p. m., pursuant to adjournment.

126 *Cross-examination.*

By W. Y. Fendall, esq., proctor for the libellants:

1 x-int. How and where are you now employed?

Answer. I am now employed as chief engineer on board the steamer Baltimore.

2 x-int. Can you swear positively that during the five hours next after the collision you did not, at any time, leave the engine-room of the steamer?

Answer. No, sir; I went on deck once or twice during the time.

3d x-int. In whose charge did you leave the engine when you went on deck?

Answer. In charge of the 1st assistant engineer.

4th x-int. Can you state with certainty how often during these five hours you left the engine-room, and how long you remained absent from it?

Answer. No, sir, not how often; but I did not stay more than five minutes at a time when I did leave.

5th x-int. Can you swear that during those five hours no one went into the engine-room except yourself and the 1st and 2d assistant engineers?

127 Answer. No, sir; I would not swear positively.

6th x-int. Can you swear that none of the colored men who came from the sunken vessel went into the engine-room during that time?

Answer. I don't think they did. I cannot swear they did not, because I don't allow white men nor colored men in there unless they have business.

7th x-int. Can you swear that during that time no one in or near the engine-room said that the captain of the Baltimore was not a fit person to command a vessel, or words to that effect?

Answer. No, sir; I could not swear that neither.

8th x-int. When did you first notice that Capt. Lewis, of the Baltimore, on that trip, was under the influence of liquor?

Answer. Well, I thought when we left Georgetown that he had taken a little.

9th x-int. Is that the only time that you noticed him when he was under the influence of liquor?

Answer. That was the only time. I don't know that I saw him any more after we left Georgetown until the collision.

128 10th int. Why was it that you did not see him again?

Answer. Because his place was in the wheel-house and mine down in the engine-room.

11th x-int. What was there in the manner of Capt. Lewis that caused you to know he had been drinking?

Answer. Well, I only thought he looked like he had been drinking a little.

12th x-int. When you came out of your room, after the collision, did you see Capt. Lewis? and if you did, where was he?

Answer. No, sir; I did not see him.

13th x-int. Had you, on any occasion before that time, seen Capt. Lewis under the influence of liquor? and if so, how often?

(Objected to by Mr. Wilson.)

Answer. Well, I have seen him at times, when I thought he had been taking a little; I cannot say how often; I cannot keep account of trifling things like that.

14th x-int. Were these occasions during the times that the steamer was making her trips from one port to another?

Answer. No, sir; it was when she was in port.

15th x-int. Did you see, or had you reason to know, that any

129 liquor was on board the steamer at the time of the collision?

Answer. No; I did not see, nor don't know whether there was any on or not.

16th x-int. Do you know whether it was the habit of Capt. Lewis to carry liquor with him?

Answer. I do not know.

17th x-int. Have you spoken to any one, or has any one spoken to you, since your examination this afternoon in regard to the condition of Capt. Lewis, during the time of the voyage of the steamer Baltimore, at the time she came into collision with the Woolston?

Answer. No, sir.

Direct examination resumed.

1st re-direct int. In saying that you thought Capt. Lewis had been taking a little, did you mean to say that Capt. Lewis was drunk, or that his ability to properly command his vessel had been at all affected by what he had taken?

(Objected to by Mr. Fendall.)

Answer. No, sir.

2nd re-direct int. Explain your answer, and the use of the expression that he had been taking a little.

130 Answer. Well, I thought he looked like he had been taking a little, but I did not think he had been taking any to hurt him. He [he] navigated the ship down the river as well as he ever did.

LEWIS T. HOPKINS.

Sworn to and subscribed before me this 9th day of March, 1865.

[SEAL.] EDM'D F. BROWN,
U. S. Commissioner.

[Int. rev., 9 March, 1865.]

No. 11.—*Deposition of A. H. Dodge, for def't.*—*Filed March* 27, '65.

And the said A. H. Dodge, being about the age of 48 years, and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in the matter of controversy aforesaid, I did carefully examine the said A. H. Dodge, and he did thereupon depose, testify, and say as follows, in answer to interrogatories proposed to him by Nathaniel Wilson, esq., proctor for the defendants:

131 1st int. What is your name, occupation, and residence?

Answer. My name is A. H. Dodge; I reside in Georgetown, D. C.; occupation, president of the Gas Light Company.

2nd int. State if you have been engaged in business as a shipping merchant, and if so, how long?

Answer. I have been engaged in the shipping business from 1841 to 1857, inclusive, 16 years.

3rd int. Are you acquainted wit Capt. Henry Lewis, now in the employ of the Washington and New York Steamship Company; and if yea, how long have you known him, and what means have you of knowing his character as a seaman?

Answer. I am well acquainted with him, and have known him since 1841. He was the captain of several of our vessels, and our constant associations with him as captain made us acquainted with his qualifications as master and sailor.

4th int. What was Captain Lewis's character as a sailor, and as captain, with respect to his qualifications, and with respect to deportment and sobriety?

Answer. I considered captain Lewis, as a sailor, as a cap-
132 tain, and as a navigator, second to no other captain that I ever employed. With regard to his courtesy and his deportment towards all with whom he was connected as captain, his conduct was unexceptionable, and I never knew nor heard of his being intemperate.

(Answer objected to by Mr. Fendall.)

5th int. Since his connection with your house ceased has he been in the habit of visiting the port of Georgetown, and have you, since that time, heard anything derogatory to his character as a seaman, or as a man of correct and sober morals?

Answer. He has been in the habit visiting Georgetown as a master in the line of steamships between New York and Georgetown, and I have never heard a word derogatory to his character as a seaman, or as a man of correct and sober habits, up to the present time.

Cross-examination.

By W. Y. Fendall, esq., proctor for the libellants:

1st x-int. Since Capt. Lewis ceased his connection with your house, what have been your means of knowing his habits, and about how often have you seen him since that time?

133 Answer. I have not had opportunities of seeing a great deal of Capt. Lewis since that time, in consequence of my disconnection with mercantile pursuits, and cannot say how many times I have seen him since that time, but have often met with him.

2nd x-int. Are you in any way interested in the steamship company to which the steamship Baltimore belongs; and if so, what interest have you in it?

Answer. I am not interested in it in any way whatever.

A. H. DODGE.

Sworn to and subscribed before me this 9th day of March, 1865.

[SEAL.] EDM'D. F. BROWN,
U. S. Commissioner.

[Int. rev., E. F. B., 9 March, 1865.]

134 No. 11.—*Deposition of A. H. Pickerell, for def't.—Filed March* 27, '65.

And the said A. H. Pickerell, being about the age of 45 years, and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in the matter of controversy aforesaid, I did carefully examine the said A. H. Pickrell, and he did thereupon depose, testify, and say as follows, in answer to interrogatories proposed to him by Nathaniel Wilson, esq., proctor for the defendant:

1st int. What is your name, occupation, and residence?

Answer. My name is A. H. Pickrell; my occupation, a lumber merchant; my residence, Georgetown. D. C.

2nd int. Are you acquainted with Capt. Henry Lewis, who is employed by the Washington and New York Steamship Company; and if yea, how long have you known him?

Answer. I have known him from 18 to 20 years. From 1843 to 1855, I was engaged in the grocery business, and made large shipments to and from New York on vessels of the New York line, in one of which he was an officer; since then I have known

135 him as a captain, sailing from Georgetown to New York.

3d int. What has been, and is, his reputation and character with respect to his qualities as a seaman, and with respect to sobriety and correctness of conduct?

Answer. I have heard him generally spoken of as the ablest captain in the New York line. His character for sobriety and correctness of conduct is, I believe, uniformly good.

(Mr. Fendall, proctor for the libellants, has no questions to ask this witness, but objects to the entire deposition.)

A. H. PICKERELL.

Sworn to and subscribed before me this 9th day of March, 1865.

[SEAL.] EDM'D F. BROWN,
U. S. Commissioner.

[Int rev., E. F. B., 9 March, 1865.]

136 No. 12.—*Deposition of Sam'l E. Barnes, for def't.—Filed June* 26, '65.

And the said Samuel E. Barnes, being about the age of 42 years, and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in the matter of controversy aforesaid, I did carefully examine the said Samuel E. Barnes, and he did thereupon depose, testify, and say as follows, in answer to interrogatories proposed by Nathaniel Wilson, esq., proctor for the defendants:

1st int. What is your name, age, residence, and occupation?

Answer. My name is Samuel E. Barnes; my age is forty-two years; my residence Baltimore, Maryland; my occupation, an engineer.

2nd int. State whether or not you were on board the steamer Baltimore, in December, 1863; and if yea, in what capacity were you employed.

Answer. I was on the steamer Baltimore in December, 1863, as second engineer.

3d int. State at what part of the vessel you were at the time of the collision of the steamer Baltimore with a sailing vessel in
137 the lower Potomac, in the month of December, 1863.

Answer. I was in the engine-room, on watch.

4th int. State how much of the time after the collision, and before the time of landing the persons taken from said sailing vessel, you were in the engine-room of the steamer.

Answer. I was on watch until 12 o'clock, but don't recollect what hour the men were landed.

5th int. State if you were absent from the engine-room at any time after the said collision and before the time of said landing; how long you were absent; and who was in charge of the engine during your absence; and who was present while you were in the engine-room.

Answer. I went off watch at 12 o'clock and turned in. The chief engineer was in charge during my absence. The chief engineer came into the engine-room after the collision.

6th int. State if, at any time while you were in the engine room the night of the collision, a colored man from on board the schooner or sunken vessel came into the engine-room; and if so, state the conversation that occurred between that colored man and yourself, or any other of the engineers.

138 Answer. No colored man came into the engine-room while I was on watch.

7th int. State whether, at any time on the night of the collision, a colored man came into the engine-room, or near the engine-room, and asked of you, or in your hearing, what sort of a man the captain of the steamer was, or any question of similar significance.

(Objected to by Mr. Fendall, proctor for the libellants.)

Answer. There was no colored man came in the engine-room, but I saw one pass by the door; but I had no conversation with him. He did not ask any questions in my hearing, or say anything at all about it.

8th int. State whether, in reply to any question asked by a colored man in or near the engine-room, on the night of the collision, you stated, or heard any of the engineers of the steamer state, that the captain of the Baltimore was not fit to be a captain, and that he ought to be turned out of his office.

Answer. I did not so state, nor hear any one else say so.

9th int. What is the reputation of the captain of the Balti-
139 more for seamanship and sobriety of conduct?

(Objected to.)

Answer. His reputation, so far as I know, for seamanship and sobriety of conduct, is good. I never saw anything out of the way in him.

Cross-examination.

By W. Y. Fendall, esq., proctor for the libellants:

1st x-int. How are you employed at present?

Answer. I am chief engineer of the steamer Fairbanks.

2d x-int. Does the steamer Fairbanks belong to the same line to which the steamer Baltimore belongs?

Answer. Yes, sir.

3d x-int. Have you conversed with any one in regard to the testimony which you were to give in this case, or in regard to the interrogatories which were to be propounded to you; and if so, with whom, and when?

Answer. All the conversation I had with any one was with a lawyer last February, I think, who came down to our ship and
140 asked me some questions. That is the only person I conversed with.

4th x-int. From the time of the collision till your watch ceased, what persons came in the engine-room?

Answer. No person but the chief engineer, to my recollection.

5th x-int. Can you state that, from the time of the collision till your watch ceased, no person came into the engine-room except the chief engineer?

Answer. Yes, sir.

6th x-int. What length of time elapsed between the time of the collision and the time when your watch ceased?

Answer. I could not be positive, but I think it was about three hours.

7th x-int. At the time of the collision at what speed was the steamer going?

Answer. To the best of my judgment, I think she was going about nine knots. I was then in charge of the engine.

8th x-int. Did you, at any time, converse with any person or persons from the sunken vessel; and if so, when, where, and who were they?

Answer. I did not.

9th x-int. Did you receive any order to stop or reverse the
141 engine at any time before the collision; and if so, from whom, and how long before the collision?

Answer. I received an order to stop the engine, but not to reverse it, and that order was by the bells. I do not think it was over one minute before the collision.

10th x-int. How long before the collision was it that you had seen Captain Lewis?

Answer. I don't recollect that I had seen Capt. Lewis since supper, which was about five o'clock.

11th x-int. Can you state that no one, save the chief engineer, came into the engine-room from the time of the collision till the persons from the sunken vessel left the steamer?

Answer. Yes; no one came in but him, to my knowledge.

12th x-int. Do you know when the persons from the sunken vessel left the steamer; and if so, where were you at that time?

Answer. I have no recollection when they left the steamer, nor where I was at the time.

13th x-int. Did you see any of the persons from the sunken
142 vessel; and if so, when, where, and who were they?

Answer. I saw one colored man pass by the engine-room, and I supposed he was one of them. I don't know his name.

14th x-int. If you do not know when they left the steamer, how can you state that none of them went into the engine-room before they did leave?

Answer. None of them went into the engine-room on my watch. That is all I know about it.

15th x-int. Where did the collision take place, and what kind of a night was it?

Answer. I think the collision took place between Piney Point and Point Lookout. It was a cloudy night; I think a little misty rain.

16th x-int. When and where did the parties from the sunken vessel leave the steamer; how many were there; where were you at the time; who was then at the engine, and how long was it after the collision?

Answer. I am not able to answer that question, because I don't know.

17th x-int. How many persons from the sunken vessel did you see on board the steamer, and where did you see them?

143 Answer. I saw one colored man passing by the engine-room door as I was looking out.

18th x-int. Is he the only person from the sunken vessel that you saw after the collision till the time they left?

Answer. To my knowledge he was the only person that I knew to belong to the sunken vessel. He was a stranger among us, and I supposed he belonged to it.

19th x-int. From the time of the collision till the time the persons from the sunken vessel left the steamer, was this colored man the only person you saw or heard in or about the engine-room?

Answer. He is the only one, to my recollection, that I saw or heard about the engine-room.

S. E. BARNES.

Sworn to and subscribed before me this 14th day of June, 1865.

[SEAL.] EDM'D F. BROWN,
U. S. Commissioner.

[Int. rev., E. F. B.,
14 June, 1865.]

144 No. 12.—*Deposition of Wm. Garner, for def'ts.—Filed June 26, '65.*

And the said William Garner, being about the age of 41 years, and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in the matter of controversy aforesaid, I did carefully examine the said William Garner, and he did thereupon depose, testify, and say as follows, in answer to interrogatories propounded by Nathaniel Wilson, esq., proctor for the defendants:

I am a steward of the steamer Baltimore, and my residence is in Baltimore, Md. I was on board the steamer Baltimore at the time of her collision with a schooner on the lower Potomac, in December, 1863. I was the steward of the Baltimore.

Int. State what conversation, if any, you had on the night of the collision, or the morning after, with any one of the colored men taken on board the Baltimore from the sunken schooner.

(Objected to by Mr. Fendall.)

Answer. I had none at all.

2 int. State whether or not you said to any one of the col-
145 ored men taken on board the steamer Baltimore from the sunken schooner that the captain of the Baltimore was drunk, or made use of any words or expressions to that effect.

Answer. No, sir; I did not.

3d int. State whether or not on the night or morning after the collision you heard any of the persons employed on the Baltimore say to any of the colored men taken from the sunken schooner that the captain of the Baltimore was drunk, or any words to that effect.

(Objected to.)

Answer. I never heard any such thing.

Cross-examination.

By W. Y. Fendall, esq., proctor for the libellants:

1st x-int. When did the collision of which you speak take place?

Answer. I do not know the time.

2nd x-int. Where were you at the time of the collision; when did the persons from the sunken vessel come on board; how long did they remain on board of the Baltimore; and when and where did they leave the Baltimore?

146 Answer. I was in bed asleep at the time of the collision. The persons from the sunken vessel came on board at the time the schooner was struck; they remained on board until between half past seven and eight o'clock the next morning, as near as I can remember; they were set ashore at Point Lookout, or near there.

3d x-int. Are you a colored man, and how many colored men did you see on board the Baltimore from the sunken vessel?

Answer. I am a colored man; I think I saw four colored men on board the Baltimore from the sunken vessel.

4th x-int. At what time and where did you see them, or any of them?

Answer. The first of my seeing them was about six o'clock in the morning, on board the steamer Baltimore, standing on the main deck near the upper cabin.

5 x-int. How many persons came from the sunken vessel?

Answer. To the best of my recollection there were four colored men and the captain, a white man, making five.

147 5th x-int. Do you know at what time the collision took place?

Answer. As well as I can recollect it was between 12 and 1 o'clock; I don't think it was after half-past 12.

7th x-int. After the persons from the sunken vessel came on board the Baltimore did you see them, or any of them, in different parts of the steamer, and if so, in what parts?

Answer. The next morning I saw these four colored men standing on the main deck near the cabin; I saw the captain in the cabin in a bunk, down below.

8th x-int. At what time on the night of the collision did you go to sleep, and at what time did you wake up?

Answer. As near as I can come at it I went to sleep about 10 o'clock; I went to bed earlier; I woke up about 10 minutes after the collision.

Direct-examination resumed.

Int. What woke you?

Answer. The general noise about the decks.

148 2d int. What did you do after you awoke?

Answer. I did not do anything more than come out of my room; looked out and saw we were all safe, and went to bed again.

3d int. What time did you next leave your room?
Answer. About 10 minutes before six in the morning.

WILLIAM GARNER.

Sworn to and subscribed before me this 19th day of June, 1865.

EDM'D F. BROWN,
U. S. Commissioner.

[SEAL.]

[Int. rev., E. F. B., 19 June, 1865.]

Supreme Court, Dist. of Col.

149 No. 13.—*Order setting cause for hearing 1st Tuesday, Nov'r, 1865.—Filed Oct. 25, 1865.*

ROWLAND & WILLIAMS
vs.
STEAMER BALTIMORE. } Admiralty, No. 101.

OCT. 4, 1865.

Set this cause for hearing on the first Tuesday of November next, at the instance of the counsel for the libellants.

By order of the court.

Supreme Court of the District of Columbia.

No. 14.—*Order of business.—Filed Nov.* 11, 1865.

ROWLAND & WILLIAMS
vs.
STEAMER BALTIMORE. } In admiralty.

This cause coming on to be heard on the libel, answer, proofs and exhibits, and after hearing the argument of counsel on both sides, it is by the court, this eleventh day of November, A. D. 1865, ordered, adjudged, and sentenced, that the demand of said libellants
150 against said steamer Baltimore, her agents, owners, and other persons intervening in said cause, is valid and effectual for the value of the schooner J. W. Woolston, her cargo, tackle, apparel, furniture, and other property on board of her at the time of said collision, and the cost of this suit; but it is farther ordered that the said cause be referred to William Redin, esq., special commissioner to take proof of the value of said schooner, her cargo, furniture, fixtures, &c., at the time said schooner was sunk by colliding with the said steamer, as in the libel set forth, and inquire into the damage thereby accruing to said libellants and costs of this suit, including allowance to counsel of libellants for fees, and report the same to this court.

GEO. P. FISHER,
Jus. S. C., D. C.

151 No. 15.—*Report upon damages.*—*Filed May* 17, 1866.

ROWLAND AND WILLIAMS
vs.
STEAMER BALTIMORE. } No. 101.

By the order of the 11th November, 1865, I am directed to take proof of the value of the schooner J. W. Woolston, her cargo, furniture, fixtures, &c., at the time said schooner was sunk by colliding with said steamer as in the libel set forth, and inquire into the damages thereby accruing to said libellants and the costs of the suit including allowance to counsel of libellants for fees, and report to the court.

I have taken the depositions of John E. Stevens, Jos'h M. Simmons, Edw'd B. Gallup, William Guinand, Jno. T. Given, R. T. Merrick, W. D. Davidge, John Smithers, Sam'l H. Henry, John C. Johnson, John L. Wilson, and Robert L. Vandiver, and return the same.

I gave the annexed notice, and the counsel of the respective parties attended, and each submitted notes upon the points of reference, which are also returned. And, upon the proof taken before
152 me, as well as upon the testimony in the cause at the time of the reference, I find and report upon the points referred: First, as to the value of the said schooner, that at the time she was sunk she was of the value of five thousand dollars, ($5,000;) that the cargo was of the value of fifteen hundred and twenty-one dollars and ninety-six cents; the freight would have amounted to four hundred and fifty dollars; and that the articles of furniture, &c., were worth two hundred dollars.

$5,000	
1,521	96
450	
200	
$7,171	96

There is much contrariety of opinion among the witnesses as to the value of the schooner at the time of the collision. One of the witnesses, Smithers, states that Williams, one of the libellants, offered, in the spring of 1863, to sell the schooner for $3,500; and that in June, 1862, she was worth $3,000. Another witness, Moore, states she was worth, in Dec'r, 1863, $9,500; other witnesses, eleven in number, state that her value to have been at that time $7,000, $6,000, $6,600, $6,800, $8,000, $5,500, respectively. In 1858, one-eighth was sold for $600, and in 1863, three-eighths for $937 50. It is said in the testimony that in '62 vessels
153 were very low in price, and that Williams got a bargain in the purchase of this vessel at the price he then gave; that there was a great rise in freights, and a corresponding increase in the value of vessels towards December, 1863, which continued to increase afterwards, and that both were very high through 1864 and 1865. And Mitchell, one of the witnesses, states that a vessel in constant use would be worth very little more in Dec'r, 1863, than in December, 1862, unless repaired; there is no proof of any expenditure having been made for repairs on this vessel between those periods. Still the weight of the testimony is that in Dec'r, 1863, she would have brought under the hammer at least $5,000.

The proof as to the cargo is that 200 tons of coal were on board at

the time of the loss; that coal was then selling in Washington at $12 a ton; but Mr. Given, one of the witnesses, and a dealer in the article, states that he purchased in Nov'r, 1863, in Phila., at 8 10 per ton, and paid two dollars 25 for freight. I have ascertained that retail dealers expect to make a profit of $1 50 to $3 00 per ton. These parties were not retail dealers, but would sell the cargo in bulk to such; 50 cents per ton would be an ample allowance to them
154 as profit on the cargo. The freight is what they chiefly look to; the copy of the invoice (B 2) shows the price of the coal in Philadelphia to have been $1,471 96, and the expected profit of 50 c. a ton being added, makes the $1,521 96 allowed by me.

The whole amount of the damage accruing in consequence of the collision, composed of the several items above stated, is the sum of seven thousand one hundred and seventy-one dollars 96.

As to the counsel fee of the libellants, I refer to the depositions of R'd T. Merrick and W. D. Davidge, esq. The former thinks $1,000 would be a proper fee in such a case; the latter $500. I allow $500.

The taxed costs are $79 05, and the fees of Brown, the examiner, $43 90; of the commissioner for taking the testimony on this reference, $32 62, and my own fees $55 80.

With the question raised of the right and title of the libellants to the schooner I have nothing to do. That is a question for the court on the final hearing. The direction to me is merely to ascertain and state the amount of the damage sustained.

11th May, 1866.

W. REDIN, *Special Com'r.*

155 In the Supreme Court of the Dist. of Columbia.

No. 15.—*Points for claimants.*

Libellant's claim $8,350, as follows:

For value of	vessel	$5,500
" "	cargo	2,200
" "	freight	450
" "	articles in cabin	200
Total		$8,350

The claimants object to this valuation, and estimate and base their objections on the testimony adduced before the auditor: 1st, as to the value of the vessel sunk:

One of the claimants, Williams, gives the cost of the vessel as $3,150. He claims to have purchased her in the latter part of 1862. She was then five years old.

J. B. Woolston, one of the former owners from whom the claimants allege the vessel was purchased, states that for his share of the vessel, being 3-8 of the whole, he receives but $937 50, which would make the total cost about $2,500. Mr. Smithers, a witness produced

by claimants, has actual knowledge of the vessel, having sailed
156 in her as mate. He states that Williams, one of the claimants, offered the vessel for sale, in the spring of 1863, for $3,500. He regards the vessel as having been worth at the time of the alleged purchase by claimants about $3,000, and says she was not worth any more at the time he left her in June, 1862. He also states that no repairs were made upon her up to that time, and that the shipping business was then dull. He further states that the vessel was not suited to the use for which the claimant bought her, being a canal schooner.

John C. Johnson, a grocer and ship store dealer of experience, describes the schooner, and says she was not fit to go outside in the open sea; also that there was not much demand for vessels like the Woolston in December, 1863, and that such a vessel was not worth more in December, 1863, than in December, 1862, the time of the alleged purchase.

M. A. Mitchell, a dealer in vessels in Baltimore, of great experience, says a vessel in constant use was not worth more in December, 1863, than in December, 1862; that the great increase in the value of shipping occurred after December, 1863, (the time when
157 the vessel was sunk.)

It is shown by the evidence that freight was no higher in December, 1863, than in December, 1862.

Several witnesses were examined on the part of the libellants, who fix a very high value upon the sunken vessel. The only one of these witnesses who was cross-examined before the auditor, and as to the value, states that his estimate is based upon the prices paid by him for a vessel in June or July, 1864, (six months after the Woolston was sunk,) and gives as a reason for the advance that the army was then moving and created a demand. He says also that freights were high in December, 1862, and pretty good in December, 1863.

Claimants admit that there has been a great advance in the value of ships, but assert that the testimony shows that this advance did not occur until after December, 1863, and that the increase was caused by the public events that happened in the spring and summer of 1864, as stated by the libellants' witness.

158 2d. As to the value of the cargo and amount due for freight, Exhibits B & B 2 show the actual cost of the cargo and the freight that was to have been paid, thus, price of coal $1,450, insurance $21 64.

For the cargo, therefore, the libellants seek to recover about $800 more than its actual cost, including insurance, their claim being $2,200.

This indicates a purpose to make the sinking of the vessel a profitable speculation, and not merely reimbursements for actual loss.

3rd. No proof has been advanced as to the value of the articles in the cabin, for the loss of which $200 is claimed.

4th. Claimants allege that libellants have failed to prove their title, there being no record-evidence of their title. See act July 29, 1850, sec. 1, 9 Stats. at Large, p. 440.

5th. Claimants object to the allowance of counsel fees.

159 No. 15.—*Points for libellants.—Memo. for Mr. Redin.*

RAWLAND & WILLIAMS *vs.* STEAMER BALTIMORE. } Admiralty, No. 101.

This cause was referred to Mr. Redin as special commissioner to take proof of the value of said schooner, her cargo, furniture, &c., at the time she was sunk, and enquire into the damages thereby accruing to the libellants and the costs of the suit, including allowances to counsel of libellants for fees.

In regard to the value of the schooner, many persons who were well acquainted with the value of vessels, and particularly with the value of the Woolston, were produced by the libellants, and they, almost without exception, place on her a value greater than that claimed in the libel.

Cap. Geo. M. Moore swears that he was acquainted with the Woolston, and that he believes in Dec., 1863, she was worth $9,500, and on cross-examination he says that he is the owner of a schooner for which three years before he paid $4,750, and afterwards
160 he refused to take $9,500 cash for her.

Capt. Henry Holmes; been following the sea for 20 years, and knew the Woolston, and saw her in Georgetown the trip before she was lost; thinks that in December, 1863, she was worth $7,000 or $8,000.

Capt. Henry W. Williams, has followed the water for 35 years; knew the Woolston, and thinks her true value in Dec'r, 1863, was $6,000.

James Bell, one of the crew of the Woolston, thinks that she would at the time of the collision have brought $6,000.

Wm. Key, another of the crew, thinks she was worth $6,000.

Capt. Peter Galloway, has been a sailor for ten years; knew the schooner J. W. Woolston, and last saw her a short time before she was sunk. He thinks she was then valued at $6,500 to $6,800. If she could have been bought for that money he could have got a man to buy her. He thinks she would have been worth about $9,000 in Feb'y, 1865, if kept in good order.

Capt. Edward Delaney, has been a sailor for about 23 years, and for about 14 years the master of a vessel; knew the schooner
161 J. W. Woolston, had frequently seen her, and saw her the day before she was sunk, and judges she was worth at that time every dollar of $6,600. Vessel property has since then advanced, and if the schooner were in Feb'y, 1865, in as good condition as she was when sunk she would be worth $8,500.

All the foregoing witnesses gave their evidence before the case was heard in court.

John E. Stevens. For about 25 years have been engaged in the business of buying and selling vessels. I consider myself a judge of the value of vessels. I have bought and sold more vessels than any man in Baltimore for the length of time I have been engaged in it. Knew the Woolston. I have been aboard of her several times. Was on

board of her the trip before she was lost. From my knowledge of her I think that in 1863 she was worth $6,000. I would not like to take that for her. When I saw her in Nov., 1863, she appeared to be in good order and condition.

Jos. M. Simmons. Has a knowledge of the value of vessels,
162 has been interested in them for 15 years. The Woolston was at my wharf. She was considered by us at Havre de Grace as a first-class bay schooner. In the fall of 1863, I considered she was worth $6,000. Early in Dec'r, 1863, coal was selling at Havre de Grace $8 25 per ton.

Edward B. Gallup. I have followed the water for 25 years. I have a knowledge of the value of vessels. Have seen the Woolston 15 or 20 times; last saw her on the trip she was sunk; considered her one of the first vessels on the bay. From his knowledge of her he thinks she was worth more than $6,000 when he last saw her; vessels were very high at that time; they had gone up more than double.

John L. Wilson. Has been a sailor for 40 years, and for 25 years been a master of sailing vessels; has had a good deal to do with them, thinks he is a judge of their value. Knew the schooner Woolston; suppose she was rated a No. 1 vessel. In December, 1863, I think she was worth $5,500. On cross-examination he says that he thinks she would have brought $6,500 in the spring of 1864.

163 Robert Vandiver. Owns three vessels; buys and sells them; I know the value of them. I think I saw the Woolston perhaps about two months before she was lost. She was in fine order, everything looked well about her; think she would have brought $5,500 under the hammer. "I should think so from having bought one in the spring following, (1866.) I paid $5,350 for mine, and she only carried 120 tons, loading her deep, while the J. W. Woolston carried 180 tons easily, and required no more men to work her than mine did. I have the one I then (in the spring of 1864) bought yet. I should have been willing to exchange vessels, and pay $500 to boot." She was a year younger than mine.

"The value of vessels increased considerably between the latter part of 1862 and the latter part of 1863. One person sold his vessel for $6,000 in 1862, and a year afterwards gave a $1,000 [dollars] more to get her back again.

J. W. Woolston, for claimants. Knows nothing of what the schooner sold for, but only knows what his agent paid him for his share.

164 Marcellus A. Wilson, for claimants. During the year 1863 the demand for sailing vessels was not very good. In Dec. of that year, however, the demand improved and became greater.

Capt. Henry Holmes. Thinks the schooner in 1868, was worth $7,000 or $8,000.

It will thus be seen that nearly every witness who testified on the part of the libellants says that the real value of the schooner was greater than that claimed in the libel; none put on her a less value.

Capt. B. B. Williams, one of the owners, says, to be sure, that he paid but $3,150 for her in 1862, but he also says he got her a bargain.

And Capt. Gallup says that vessels were very high in Dec'r, 1863; that they had gone up more than double; and Mr. Vandiver says they increased considerably in value about that time. Mr. Wilson, for claimants, says they increased in value in December, 1864.

In regard to the coal, it is not denied; but, on the contrary, the libellants, by their exhibits, B 1 and B 2, show that she had on board a cargo of 200 tons of coal. It is also shown by the bill of
165 lading, and by the evidence of Capt. B. B. Williams, and by Bee and Key, two of the crew. As to its value, Capt. Simmons and other witnesses say, that the price in Havre de Grace in December, 1863, was $8 25 per ton, and Mr. Given, and the other coal dealers examined by Mr. Redin, confirm this statement.

It is admitted that the freight was to be $2 25 per ton, and this is proven to have been the regular price at that time.

The value of the furniture, effects, &c., is proven by Captain Williams, and by Bee and Key, to have been about $300.

Objection is also made to the allowance of counsel fees. The commissioner is directed to ascertain the costs of the suit, including counsel fees. In the case of the Appolona, 9th Wheaton, p, 362, Mr. Justice Story, in delivering the decision of the court, says, page 379:

"The fifth item allowing $500 as counsel fees, is, in our opinion, unexceptionable. It is the common course of the admiralty to allow expenses of this nature either in the shape of damages, or as a part of the costs," &c.

See also Carter *vs.* A. M. & Ocean Insurance Cos., 3 Peters, 307.

166 The title of the libellants to the schooner was not denied, until the case was referred to the commissioner. But this title is abundantly proved by the evidence of Capt. B. B. Williams, by Capt. Henry W. Williams, who says in his testimony: "At the time she (the J. W. Woolston) was lost in the Potomac she was owned by my brother, Benj'n B. Williams, of Harford county, Md., and James H. Rowland, of Cecil county, Md." He also produced copies of her licence and enrollment.

It is farther shown by the bills of sales which have been filed, and confirmed by the evidence of the claimant's own [own] witnesses, Woolston and Smithers; and the claimants have not produced a particle of evidece in any way inparing the title of the libellants, and it is submitted, in addition, that it is now too late for the claimants to go into any such question.

167 In the Supreme Court of the District of Columbia.

No. 16.—*Exceptions to auditor's report.*—*Filed June* 18, 1866.

ROWLAND & WILLIAMS
vs.
THE STEAMER BALTIMORE. } In admiralty, No. 101.

The claimant, by the counsel, Messrs. Bradley and Wilson, except to the auditor's report, and assign the following exceptions:

1st. As to the value of the vessel sunk.
2nd. As to the counsel fees.
3d. The allowance of 50 cents per ton profit on the cargo of said vessel.
June 18, 1866.

BRADLEY & WILSON, *for Cl'm'ts.*

Supreme Court of the District of Columbia.

No. 17.—*Decree and appeal.*—*Filed January* 15, 1867.

ROWLAND & WILLIAMS *vs.* THE STEAMER BALTIMORE. } 101. Admiralty.

This cause coming up to be farther heard upon the auditor's report and the exceptions thereto, and upon the other
168 proceedings in the cause, and being argued by counsel on both sides, and duly considered by the court, it is, this fifteenth day of January, A. D. 1867, ordered that the court allow the exceptions to the charge in said report of one hundred dollars for profits on the cargo of said schooner, and confirms and ratifies the said report in all other respects. And it is by the court further ordered, adjudged, decreed, and sentenced, that the libellants recover against the New York and Washington Steamship Company, the owners of said steamer Baltimore, and against Thomas P. Morgan and John B. Hutchinson, its sureties, the sum of seven thousand and seventy-one dollars and ninety-six cents, the value of said schooner, her tackle, apparel, furniture, cargo, &c., as shown by the report of said auditor, and do also recover the costs of this suit, including five hundred dollars for fees of the counsel of the libellants, which is hereby allowed. And it is further ordered that judgment be entered in accordance with the de-
169 cree, and that twenty days be allowed to pay the amount thereof into court; and thereupon the said claimants, by their proctor, pray an appeal to the general term, and the same is allowed.

By order of the court.

No. 18.—*Decree in gen. term.*—*May* 6, 1867.

This cause coming on to be heard upon the record and proceedings of the District Court of the United States for this district, and being submitted without argument, it is thereupon ordered, sentenced, and decreed that the decree and sentence of the said District Court, pronounced on the 15th of January, 1867, be, and the same is in all things, affirmed. And from this decree the defendant prays an appeal to the Supreme Court of the United States.

170 In the Supreme Court of the District of Columbia, Jan'y 31, 1867.

No. 19.—*Bond for appeal to S. C. U. S.*—*Filed June* 6, 1867.

THE NEW YORK AND WASHINGTON STEAMSHIP Company, claimants and appellants, *vs.* ROWLAND & WILLIAMS, libellants. } In admiralty, No. 101.

Know all men by these presents that the claimant and its sureties, John B. Hutchinson and J. P. Bartholow, of Washington, D. C., are held and firmly bound unto the said libellants in the sum of sixteen thousand dollars, to be paid to the said libellants, their executors and administrators, to which payment, well and truly to be made, we bind ourselves and each of us, our and each of our heirs, executors, and administrators, firmly by these presents.

Sealed with the seal of said company and the seals of said sureties this sixth day of June, A. D. 1867.

171 Whereas the above-named New York and Washington Steamship Company hath taken an appeal to the Supreme Court of the United States to reverse the decree rendered in the above-entitled cause by the said Supreme Court of the District of Columbia: Now, therefore, the condition of this obligation is such, that if the above-named New York and Washington Steamship Company shall prosecute its said appeal to effect, and answer all damages and costs if it fail to make good its defence, then this obligation shall be void, otherwise the same shall be and remain in full force and virtue.

[SEAL OF STEAMSHIP COMPANY.] THOS. CLYDE,
Presid't of New York and Washington S. Ship Co.

WM. D. HATCH.
A. C. PUISON.
NATH'L WILSON.

Approved:

ANDREW WYLIE.
Justice, &c.

I hereby certify that the foregoing is truly taken from the record of proceedings of the Supreme Court of the District of Columbia; and in testimony thereof I do hereunto subscribe my name and affix the seal said court this sixth day of May, in the year of our Lord one thousand eight hundred and sixty-seven.

[SEAL] R. J. MEIGS,
Clerk of the Supreme Court of the District of Columbia.

Supreme Court of the United States.

DECEMBER TERM, 1868.—No. 254.

THE STEAMER BALTIMORE, THE NEW YORK AND WASHINGTON STEAMSHIP CO., Appellants,

vs.

JAMES H. ROWLAND AND B. B. WILLIAMS, owners of the Schooner J. W. Woolston.

APPEAL FROM SUPREME COURT OF THE DISTRICT OF COLUMBIA.

BRIEF OF APPELLANTS.

J. HUBLEY ASHTON,
N. WILSON,
Of Counsel.

M'GILL & WITHEROW, PRINTERS, WASHINGTON, D. C.

Supreme Court of the United States.

DECEMBER TERM, 1868.—No. 254.

THE STEAMER BALTIMORE, THE NEW YORK AND WASHINGTON STEAMSHIP CO., Appellants,

vs.

JAMES H. ROWLAND AND B. B. WILLIAMS, owners of the Schooner J. W. Woolston.

APPEAL FROM SUPREME COURT OF THE DISTRICT OF COLUMBIA.

BRIEF OF APPELLANTS.

J. HUBLEY ASHTON,
N. WILSON,
Of Counsel.

M'GILL & WITHEROW, PRINTERS, WASHINGTON, D. C.

Supreme Court of the United States.

DECEMBER TERM, 1868.

THE STEAMER BALTIMORE, THE NEW YORK and WASHINGTON STEAMSHIP COMPANY, Appellants,

vs.

JAMES H. ROWLAND and BENJAMIN B. WILLIAMS, Owners of the Schooner J. W. Woolston.

No. 254.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

STATEMENT AND POINTS OF APPELLANTS.

Statement.

This is a case of collision between the schooner "J. W. Woolston," owned by the libellants, and the steamer "Baltimore," in the Potomac river, on the night of the 16th of December, 1863, which resulted in the sinking of the schooner and a cargo of coal on board of her at the time.

The schooner was on a voyage from Philadelphia to Washington; and the steamer was proceeding down the Potomac on a voyage from Georgetown to New York. The collision occurred a few miles from Point Lookout.

The theory of the libel is, that the collision was occasioned by the steamer altering her course. The answer denies this,

and alleges that, when the schooner was first seen, she was on the *port* bow of the steamer; that is, between the steamer and the Maryland shore; that the helm of the steamer was at once *ported*, which changed the course of the steamer about one point, and gave the approaching vessel a wider berth; that the steamer then steadied, when the schooner, instead of keeping her proper course, (northwest by west half west,) headed diagonally across the river, with the apparent intention to cross the bow of the steamer; and that the engine of the steamer was at once stopped, but too late to avoid the collision. The schooner was struck about midships on her *starboard* side. This fact is entirely confirmatory of the evidence on behalf of the steamer; for it shows that the course of the schooner, at the time of the collision, must have been *across* the river and across the channel.

The libel averred, article 6, that the schooner and cargo were sunk in such deep water as to make both a *total loss;* and that the cost of raising either or both would have been greater than their value. (Rec., pp. 2–3.) This is explicitly *denied* in the answer. (Rec., p. 7.) And no proof whatever was given by the libellants to sustain this allegation of total loss.

The evidence in the case is confined to the question of the collision. There were five men on board of the schooner at the time. These were the captain, who was at the helm, and four colored men. Two of these, it seems, were forward as lookouts.

Only *one* of these colored lookouts was examined. He had been a slave until the second year of the war, when he went into the navy, and was not a navigator, and did not know the points of the compass. (William Smith, Rec., pp. 17, 19.)

The *master* of the schooner, who, it is said, was at the wheel, was not examined at all.

The master, as part owner, was a competent witness, under the act of July 2, 1864. (13 Stats. at Large, 374.)

The testimony of libellants did not close till 1865.

The whole case of libellants rests on the testimony of these colored men; two of whom were *aft*, the other, an in-

experienced person being forward. Even the second lookout, if there were one, was not called.

On behalf of the *steamer* we examined the captain, the first and second mate, the man at the wheel, and a seaman, who saw the collision; all of these were on deck, are experienced navigators, and speak with perfect agreement as to the main facts of the case.

Against this intelligent testimony the court below gave a decree for libellants, who, we think, on a question as to the navigation of the schooner, were not entitled scarcely to be heard, without the evidence of the only intelligent person on the schooner, who was at the wheel, and who could speak of the navigation of the vessel.

The district court entered a decree for libellants, and directed a reference to a commissioner "to take proof of the *value* of said schooner, her cargo, furniture, etc., at the time said schooner was sunk." (Rec., p. 59.)

The commissioner allowed, as damages, the value of the schooner, ($5,000) the value of the cargo ($1,521 96,) the freight, ($450,) and the furniture, ($200.) No proof whatever was given in support of the allegation of *total loss*, etc., above referred to.

On exceptions by respondents the court confirmed the report, with the exception of the item of profits on the cargo, and awarded as damages the full *value* of the *schooner* and *cargo* at time of the collision. (Rec., p. 66.) This decree was affirmed by the Supreme Court in general term. (Rec. p. 66.)

Points of Appellants.

As the most palpable error, perhaps, of the court below relates to the assessment of damages, we begin with that.

First, The true measure of the damages in this case was the expense of raising and repairing the vessel, so as to make her equal to the value before the collision, and the expense of raising the cargo, and the amount of any deterio-

ration which it might have undergone in consequence of the sinking.

1. This principle is expressly determined by this court in the case of The Schooner Catharine *v.* Dickinson, (17 How., 170,) where Mr. Justice Nelson said that in a case of a vessel sunk by a collision, the inquiry to be made is as to the practicability of raising the vessel and cargo, and repairing the former, and that the expense attendant thereon is the principal ingredient of the *damage proper to be allowed.*

The court, in that case, expressly condemn the principle which governed the court below in the present case in respect to the damages; that is, that the owners of the schooner had a right to abandon her as a *total loss*, and look to the steamer for compensation. (17 How., p. 174.)

Williamson *v.* Barrett, 13 How., 101.

Mr. Justice Grier, in a collision case in the circuit court for the eastern division of Pennsylvania, not yet reported, pertinently and forcibly observes: "This is not the first instance in which I have had to notice that where one vessel has been so unfortunate as to come into collision with another, the parties injured suppose that the insurance doctrine of *abandonment* will apply to their case, and they may, therefore, increase the damages by their own neglect. 'We are all wise after the event,' and if a judge can point out how the accident might have been avoided, the unfortunate party is condemned to pay the damage. But this amount cannot be increased by the negligence or folly of the injured party. *The only measure of damages is the amount it would cost to repair the damage, with some allowance for demurrage.*" (Applegarth, Owner of Schooner Seeing, *v.* Schooner Harriet Rogers, 1867, MS. Op. by Mr. Justice Grier.)

In that case the district court had allowed the difference between the value of the vessel before the collision and the amount realized by the owners by a sale of the hull after the collision. The decree was reversed by the circuit court, and the amount which it would have cost to repair the vessel was alone allowed.

2. The libel alleged a *total loss.* (Rec., p. 2.) The answer denied it. (Rec., p. 7.) There was no evidence before the court on the point. It was not proved; and yet the court, without evidence, gave the full damages claimed. But this is not all. All the evidence in the case shows that the vessel probably, and the cargo certainly, might have been raised.

The following witnesses for libellants speak of having seen the masts, recognizing their color, and sails of the schooner above water, as late as June, 1864, the collision having occurred in December, 1863:

Henry W. Williams, Rec., p. 9.
James Bee, Rec., p. 11.
William Kee, Rec., p. 12.
Purnel Chesser, Rec., p. 14.
George W. Moore, Rec., p. 20.
Edward Delaney, Rec., p. 23.
Peter Galloway, Rec., p. 28.

Delaney says, "Her masts were about twenty-three feet out of water; they were perpendicular, standing in their proper place." (Rec., p. 23.)

Galloway says, "Her sails were up."

3. No effort was made by libellants to raise either vessel or cargo; and no proof given to show that this was impossible, or that the cost would have been greater than their value. Of course the coal could have been taken out without much expense.

4. For these reasons alone the decree should be reversed, and the case remanded for an inquiry as to the actual damage sustained, according to the legal principles heretofore applied by this court.

Second. On the merits, we contend, in the first place, that inasmuch as the libellants failed to examine the master of the schooner, who was at the wheel, and who was the only

person competent to speak, with any certainty, as to the navigation of the schooner before the crisis of collision, and the only witnesses examined by them were inexperienced persons, their evidence is not entitled to any credit or weight, where it conflicts with the evidence, on the part of the steamer, upon the question of the movements of the respective vessels immediately before the collision.

The colored men, for the libellants, say that the schooner did *not* change her course, and that the steamer did. We say, that the *master* at the helm was alone able to speak with certainty as to what the *schooner* did. And he is not examined, though a competent witness.

Of course these men are not to be believed, on the question of the movement of the *steamer*, if opposed by all the experts on the steamer. And they *are* so opposed, for all on the deck of the steamer swear that she did *not* change her course after the helm was *ported*, sometime before the collision, but that the course of the schooner, at the time of collision, was directly across the channel and the bow of the steamer.

The only witnesses examined from the schooner were

James Bee, (who was aft,) Rec., p. 9.
William Kee, (who was aft,) Rec., p. 11.
William Smith, (lookout,) pp. 17–18.

The other witnesses for libellants were examined on a collateral question, as to the position of the vessel after she sunk; their testimony being contradicted fully by other witnesses, who found the schooner, after the collision, lying across the channel.

Third. The steamer did everything required of her.

1. She had a lookout properly stationed at the bow.

2. Her lights were all set as required by law: a red light on the port; a green light on the starboard; and a white light aloft.

3. Not only was the officer in charge on deck, but it so happened that the captain, first and second mate, were all on deck.

4. The vessels approached on parallel lines; the schooner bore on the *port bow* of steamer; to give her room, therefore, the steamer properly ported her wheel, the effect of which, had the schooner continued her course, was to increase the distance at which they would pass. (Rec., p. 33, *et seq.*)

5. When the movement of the schooner made imminent a collision, the steamer rung first to stop, then to back.

Fourth. The collision was occasioned by the fault of the schooner.

1. The witnesses on both sides agree that the schooner lay on the bottom as she was when struck.

2. When struck, therefore, she was heading directly across the channel, so that steamers passing up and down the river could pass between her masts.

There is some conflict of evidence on this point; but the libellants' witnesses, perhaps, confounded the "J. W. Woolston" with another sunken schooner.

The controlling evidence is that of Captain Dobbin and Captain Hunter, who say they sailed between her masts, the schooner being at right angles with the channel. (Rec., pp. 40, 41, 42.)

3. All the respondents' witnesses to the main fact agree that the schooner at the time was crossing the steamer's bow at right angles.

4. This position of the schooner can only be accounted for on one of two theories:

(*a.*) Either she was sailing off her true course, or

(*b.*) She starboarded her wheel, thus changing her course, so as to occasion the collision.

5. The captain stated after the collision that the schooner had starboarded her wheel; and this is probably the truth of the case.

David I. Price, Rec., p. 36.

Fifth. The schooner being bound up the river, and her true course being northwest by west, or west northwest, and having no right to go to the Virginia shore, either of the above suggested manœuvres was wrong, and puts her in fault.

1. The wind being free for a vessel up the river, the steamer had the right to assume that the schooner was bound up instead of across the river.

2. "It is a fault for a vessel entitled to her course, as against the colliding vessel, to luff, keep-away, or in any way change her course."

The Propeller Buffalo, 1 Newberry, 115.
The Schooner Catharine, 17 How., 170.

Sixth. The schooner had a free wind. The night was dark. She had a poor light. The steamer, with all her lights up, must have been seen at a greater distance than the schooner. As the schooner saw the steamer, she had no right to so change her course as to defeat a manœuvre of the steamer intended to avoid her and prevent a collision. The duty was incumbent on her to hold her course, unless the necessities and exigencies of her situation or of her navigation required a change of course. That there was any such necessity or exigency is not pretended.

Peck *v.* Sanderson, 17 How., 178.

The steamer ported her helm as soon as she saw the schooner, and threw herself farther to the right. This would have prevented any danger of collision, if the schooner had not changed her course.

Capt. Lewis, Rec., p. 33.

Seventh. The attempt to impeach Captain Lewis has not only given him an opportunity to establish, in the most complete manner, his seamanship and sobriety, but also shows that the libellants prefer to rely upon such worthless testimony, rather than examine their master, who was their most important witness, if he could have testified in their favor.

The testimony of the colored men from the schooner, as to conversations with Captain Lewis, is so completely overcome, that their evidence, on the main question, would be entitled to very little credit, if it were not, as it is, fully contradicted.

Eighth. If the court should attribute any fault whatever to us in the navigation of the steamer, inasmuch as there was undoubted fault, according to the above argument, in the schooner changing her course about the crisis of collision, the case presented would be one of mutual fault, in which the damages should be divided, according to the law of the English and American admiralty.

The Schooner Catharine, 17 How., 177.

Ninth. On the merits the decree should be reversed; but if not on the merits, the decree should be reversed on the question of damages, and the court below should be directed to ascertain them according to the rule for the ascertainment of the measure of damages expounded by this court in the case of The Catharine, above cited.

N. Wilson,
J. Hubley Ashton,
For Respondents and Appellants.

Supreme Court of the United States.

ROWLAND & WILLIAMS,

v.

THE STEAMER BALTIMORE, ET AL.

ON APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.—IN ADMIRALTY.

APPELLEES' BRIEF AND POINTS.

The libel was filed by appellees against the steamer Baltimore for collision with and total destruction of schooner J. W. Woolston and cargo, on the Potomac river. It states with minuteness all the details, and specifies the damage as amounting to $8,350.

The answer and claim of the owners of the steamer admit "the night was cloudy and had become quite dark." (Record, p. 6.) That the schooner was seen and reported "a considerable distance off." (Record, p. 7.) That she had a free wind up the river. That her course was N. W. by W. ½ W., but that she changed her course to cross steamer's bow, and the steamer's engine was stopped, but too late to avoid sinking her. It also sets up the usual excuse that steamer was wholly without fault, and schooner wholly to blame, but admits the look-out saw *the schooner's light*, and puts libellants to proof, etc.

PROOF.

That libellants were owners;
H. W. Williams, Rec., p. 9;
J. Bee, Rec., p. 10;
W. Key, Rec., p. 11.

That night was cloudy; wind free for schooner; that she had a large globe-lantern light, and proper look-outs.
J. Bee, Rec., pp. 10 and 11;
W. Key, Rec., p. 12;
W. Smith, Rec., p. 19.

That she did not alter her course, and that steamer's look-out could have seen three-fourths of a mile off, and that steamer's change of course wholly caused collision.
J. Bee, Rec., p. 10;
W. Key, Rec., p. 12;
W. Smith, Rec., p. 18.

That schooner did not alter her course, verified by her position after she sunk, as indicated by her masts.
H. W. Williams, Rec., p. 9;
J. Bee, Rec., p. 11;
W. Key, Rec., p. 12;
P. Chesser, pilot, Rec., p. 13;
who proves channel five miles wide at point of collision, Rec., p. 14; Moore, Rec., p. 20.
H. Holmes, Rec., p. 17;
G. W. Moore, Rec., p. 20;
J. Brannogan, Rec., p. 22;
E. Delaney, Rec., p. 23;
P. Galloway, Rec., p. 25;
J. Galloway, Rec., p. 28.

Appellant's witnesses prove they sunk the schooner in five minutes after altering steamer's course.
C. F. White, Rec., p. 29.

That it was pretty dark, and that they could not tell how far off the schooner was.

Captain Lewis, of steamer, (Rec., p. 31,) who says he saw the schooner's light. Rec., p. 33.

Price, first mate of steamer, (Rec., p. 35,) says night was very dark; that they saw the schooner's light three hundred and fifty or four hundred yards off, and that they then altered the course of the steamer. (Rec., p. 35,) and struck her *in three to five minutes* after altering the course; steamer going seven to eight knots.

(At eight knots an hour a steamer would go above one thousand one hundred and seventy-five yards in five minutes.)

Barnes, engineer, then in charge of the engine (Rec., p. 56) says she was going nine knots.

The decree of the judge who heard the cause in the first instance having been affirmed by the full court at the general term, and said decree being in favor of libellants, in support thereof these appellees will insist—

I.

That where courts below in collision causes concur in opinion, and there is testimony supporting their decision, it will not be reversed here on doubts raised.

The Hypodame, 6 Wallace, 223.
Norton v. Newell, 3 Wallace, 267.

II.

That the title of libellants to schooner was not put in issue until the case was referred to commissioner. That it was abundantly proved by parol, also by copies of her license and enrollment, (Exhibit A and B, Rec., p. 9) which appear to be omitted from the Record.

III.

That the values placed on the vessel, cargo, etc., were sustained by the proof.

IV.

That the allowance for fees to counsel in admiralty was correct.

The Apollon, 9 Wheaton, 362.
Carter *v.* A. M. and Ocean Ins. Co., 3 Peters, 307.

GEORGE H. WILLIAMS,
W. Y. FENDALL,
for Appellees.